

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 567.

HOUSTON EAST AND WEST TEXAS RAILWAY COMPANY
AND HOUSTON AND SHREVEPORT RAILROAD COM-
PANY ET AL, APPELLANTS,

vs.
THE UNITED STATES, THE INTERSTATE COMMERCE
COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED MAY 22, 1913.

(23,712)



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a United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Railroad Commission of Louisiana, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, ss:

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Petition.*

Filed May 10, 1912.

In the United States Commerce Court.

No. —. In Equity.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition.

To the Honorable the Judges of the United States Commerce Court:

Houston, East & West Texas Railway Company, a corporation duly and legally incorporated under the laws of the State of Texas, with its principal office and place of business in the City of Houston, in the State of Texas, and Houston & Shreveport Railroad Company, a corporation duly and legally incorporated under the laws of the State of Louisiana, with its principal office and place of business in the City of Shreveport, in the State of Louisiana, file this their petition against the United States of America and thereupon complain and say:

2 I.

That petitioners are carriers by rail engaged in the carriage of domestic commerce within the State of Texas and domestic com-

merce within the State of Louisiana respectively and of interstate commerce between the States of Texas and Louisiana and between the States of Texas and Louisiana and other states and territories of the United States and foreign countries and have been such carriers engaged in the carriage of such commerce during the time of all the happenings hereinafter referred to and for many years prior thereto; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioners in the conduct of interstate and foreign commerce during the time they have been conducting such business have been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioners are informed and charge, just, fair and reasonable as to all parties, places, commodities and states interested therein.

II.

That heretofore, to-wit, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against your petitioners and other carriers engaged in interstate commerce, among others the St.

3 Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company and others, said cause being No. 3918 on the docket of said Commission, wherein they complained of your petitioners and numerous railway companies, the names of which are set forth in said petition, which is herewith referred to and prayed to be taken as a part of this petition as fully as if set out at length herein and which will be filed in this cause, of an alleged discrimination in rates on various commodities and articles of commerce in said petition mentioned and set forth, as between Shreveport, Louisiana and distributing points in Texas to competitive points in the State of Texas, and for cause of discrimination alleged in said petition that the defendants named therein charged, collected and received from said distributing points in Texas to said competitive points, rates which are much less by any method of comparison than the rates exacted by defendants for the transportation of similar articles between Shreveport and the same destinations, thereby giving and creating an undue advantage in said competitive territory to the distributing points in Texas, and it being, among other things, alleged that "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said

4 Shreveport and said points in Eastern Texas." That answers were filed to said petition by various defendants named therein, among others by your petitioners; that thereafter, by permission of the said Interstate Commerce Commission numer-

ous pleas of intervention were filed both by shippers and commercial bodies in the State of Louisiana joining in the prayer of the complainants. That testimony was taken and arguments made in said cause, and the same was submitted to the Commission on January 16, 1912.

III.

That on March 11, 1912, the Interstate Commerce Commission handed down a report and order in said cause. The majority of said Commission held with and decided in favor of the complainants and the minority of the Commission dissented from such holding.

IV.

The opinion of the majority of said Interstate Commerce Commission begins by stating what had been shown to be the policy of the Texas Commission and after quoting numerous utterances of the Railroad Commission of Texas the opinion, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the north and east into Texas were pursuing a policy hostile to the development of that state. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas Commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests."

That thereafter in said opinion the Interstate Commerce Commission stated the real nature of petitioners' complaint in said cause as follows:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The opinion then states that the Interstate Commerce Commission has no power or authority to prescribe rates for intrastate transportation within the State of Texas and propounds the following question:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier

makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?"

The Interstate Commerce Commission thereupon announces the conclusion that it has the power to prevent such discrimination as follows:

"An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rate of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce 'among the states' against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead."

That thereupon the opinion announces the following conclusions:

"We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
	Miles.	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Minelo, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
	Miles.	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angolina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

9 (3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within
10 Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

In accordance with said opinion and conclusions an order was entered making effective the conclusions so announced, the same to become operative on or before the 1st day of May, 1912, and to remain in force for a period of not less than two years thereafter. Concurring opinions were filed, both of which reached the conclusion that the Interstate Commerce Commission had the power to prevent discrimination against interstate rates by state rates which covered a part of the line of transit of the interstate route. The three dissenting opinions announced the proposition that the Interstate Commerce Commission had no authority under the Act to Regulate Commerce or otherwise, to control state rates, or to adopt intrastate rates made under state authority as measures of interstate rates without finding that the interstate rates complained of were unreasonable

and that the intra-state rates were reasonable, and that the order based upon the opinions of the majority exceeded the powers of the Interstate Commerce Commission under the law and was therefore null and void. A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is hereto attached, marked

11 Exhibit A and is prayed to be taken as a part hereof as fully as if set out at length herein. That thereafter on or about the

19th day of April, 1912, prior to the date when said order by its terms was to become effective, the Interstate Commerce Commission by its order, duly entered in that behalf, extended the effective date of said order to June 1, 1912. That said order by its terms is directed only against your petitioners and the Texas & Pacific Railway Company, but petitioners allege that the Missouri, Kansas & Texas Railway Company of Texas extends from the City of Dallas, in said State of Texas, to the said City of Shreveport, and likewise the St. Louis Southwestern Railway Company of Texas, in connection with its affiliated line, the St. Louis Southwestern Railway Company, extends from said City of Dallas to said City of Shreveport and each of said companies extends to various commercial points of distribution in east Texas which are in competition with the City of Shreveport and also with the various cities and towns situated on the lines of the Texas & Pacific Railway Company and also upon the lines of your petitioners and by reason of competitive conditions it is necessary for these lines, both of which were parties to said cause, to adopt whatever rates are in force upon the lines of your petitioners and of the Texas & Pacific Railway Company. That the line of your petitioner, the Houston & Shreveport Railroad Company, extends from the City of Shreveport to the Texas-Louisiana state line, a distance of 42.8 miles; that the line of your petitioner, Houston, East & West Texas Railway Company, extends from the Texas-Louisiana state line to the City of Houston, a distance of 188.2 miles; that petitioners are affiliated in interest and are operated as one continuous line from the City of Shreveport to the City of Houston, a distance of 231 miles. That at the City of Nacogdoches, a commercial and jobbing center of importance, it connects with the line of the Texas & New Orleans Railroad Company, which is affiliated in interest with your petitioners and extends from the City of Dallas to the City of Beaumont in said State of Texas and from the City of Beaumont to the City of Houston in said state. That at the City of Lufkin, a commercial and jobbing center of importance, it connects with the St. Louis Southwestern Railway Company of Texas. That at the City of Houston it connects again with the lines of the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company and the Houston & Texas Central Railroad Company, all of which are affiliated in interest with your petitioners and over which by through routes and joint rates it transports large quantities of interstate commerce to and from the City of Shreveport and to and from various states and territories of the United States through said city. That the City of Shreveport has a population of about 30,000 inhabitants and is situated in the northwestern part of the State of Louisiana, about 42

miles from the Texas-Louisiana state line. That it does a large jobbing business and there is tributary thereto a large territory within the State of Texas. That the City of Dallas has a population of approximately 100,000 inhabitants, and is situated in the northern part of Texas, approximately 73 miles from the Oklahoma-Texas state line and 113 miles west of the City of Shreveport, and does a large jobbing and distributing business in the territory between Dallas and Shreveport, which territory may be described as competitive territory for the jobbing interests of the two cities. That

13 the City of Houston is situated in the southeastern part of the State of Texas, has a population of approximately 110,000 inhabitants and is distant from Shreveport approximately 231 miles. It is a large jobbing center and the territory in Texas lying between it and said City of Shreveport is competitive territory for the jobbing interests of the two cities. That the City of Dallas is connected with the City of Shreveport by the line of the Texas & Pacific Railway and also by that of the Missouri, Kansas & Texas Railway of Texas and by the St. Louis Southwestern Railway Company of Texas in connection with its affiliated line, the St. Louis Southwestern Railway. The City of Houston is connected with said City of Shreveport by the lines of your petitioners as hereinabove alleged.

V.

That in said petition of the Railroad Commission of Louisiana hereinabove referred to the rates, both class and commodity, were complained of as being unreasonable in themselves and also as discriminatory against the City of Shreveport, in that for equal distances rates from Shreveport to the said competitive territory within the State of Texas were greater than the rates from the Texas cities and particularly said cities of Houston and Dallas, it being alleged in said petition that the rates from the Texas cities to said competitive territory had been established by the Texas Commission for the purpose of protecting Texas manufacturers and wholesalers in said

14 competitive territory against the manufacturers and wholesalers of the City of Shreveport and that the Texas Commission had so framed the rates from the Texas cities to this competitive territory as to preserve it for Texas manufacturers and jobbers and prevent the Shreveport manufacturers and jobbers from making sale of their goods and wares in this competitive territory. While the rates were alleged to be unjust and unreasonable in themselves the real contention of the Louisiana Commission in said cause was that the same affected an unjust and unlawful discrimination in favor of Texas manufacturers and jobbers as compared with the rates which were established by the Texas Commission to competitive points. That there was no substantial evidence introduced on the hearing of said cause to the effect that the rates complained of, either class or commodity, were unjust or unreasonable in and of themselves and the Interstate Commerce Commission in its report and order does not find that the several commodity rates complained of were either unjust or unreasonable in and of themselves, but does find, basing its finding solely and exclusively upon a comparison of

said commodity rates from Shreveport to Texas with the commodity rates in force between points in Texas for equal distances, that said commodity rates between Shreveport and Texas were unjustly and unduly discriminatory, all of which will more fully appear from the report and order of the Commission hereinabove referred to. That the power of the Interstate Commerce Commission under the law, as petitioners, are informed and believe and, therefore, charge, was and is to find whether or not the commodity rates established by the carriers and complained of by the Louisiana Commission were in themselves unjust and unreasonable and unless they found them so to be to continue them in force and if they found them so to be to prescribe rates in themselves just and reasonable. Your petitioners aver that the Interstate Commerce Commission has wholly failed and refused to pass upon the question of the reasonableness of the commodity rates established by the carriers and complained of in said cause and made no finding that they were in any respect unjust or unreasonable, but held that such rates discriminated against the City of Shreveport, because for equal distances they were greater than the rates established by the Railroad Commission of Texas from the cities of Dallas and Houston and other points in Texas to apply on traffic originating at such points and destined to points within the State of Texas and wholly carried within that state, such traffic being entirely within the State of Texas and said rates being established by the Railroad Commission of Texas under circumstances hereafter set forth.

VI.

That heretofore, to-wit, on or about the 21st day of April, 1891, the legislature of the State of Texas, in pursuance of a constitutional provision duly authorizing it thereto passed an act creating the Railroad Commission of Texas with full and complete power over all intra-state railroad traffic. The said act gives the Railroad Commission of Texas power to classify freight, to fix reasonable rates for transportation of freight between points within the state, to fix different rates for different railroads, for different lines under the same management, and for different parts of the same line and to change and alter said rates. That said act likewise confers power upon the Railroad Commission of Texas to correct abuses in the management of railways and confers upon that body large and comprehensive powers in the control, management and operation of railways within that state. That since the passage of the original act hereinabove referred to, amendments and additions have been made thereto conferring upon said Commission power to make freight and passenger rates to take immediate effect or at such time as might be fixed, whenever an emergency shall arise, the sufficiency of which emergency was to be determined by said Commission and also conferring upon said Commission power temporarily to suspend existing rates. That under and by virtue of the laws so passed by the legislature of the State of Texas, the Railroad Commission of Texas has established and enforced from the time of its creation, rates, tariffs, regulations and classifications on

all and every character of property whatsoever transported by railroads between points in the State of Texas and have enforced the observance of same. That under the provisions of said Railroad Commission Act the Railroad Commission of Texas has full power and authority to initiate and establish absolute rates. That the carriers thereunder have no right under the law to charge, demand or receive a greater or less rate than that fixed by the Railroad Commission for the carriage either of freight or passengers. That a departure from the rates so established by the Railroad Commission of Texas is made an offense

punishable by severe penalties; that to charge, demand or receive a greater rate than that fixed by the Commission is declared an extortion under the act punishable by fine, accruing to the State of Texas, of not less than \$500 nor more than \$5,000, and in addition to the penalties thus accruing to the State of Texas, collection of which is enforced by the order of the Railroad Commission of Texas through suits by the Attorney General of said state acting under its direction, a penalty accrues to the individual so charged or paying said excessive rate of not less than \$125 nor more than \$500. That to charge a less rate than fixed by the Commission of Texas is a violation of the order of said Commission, punishable by fine, collected as above stated, of not more than \$5,000, all of which will more fully appear from Exhibit B, hereto attached, and hereby made a part of this petition, and is prayed to be taken and considered as fully as if set out at length herein. That under said act the rates, rules, orders and regulations of the Railroad Commission of Texas cannot be collaterally assailed and are held to be conclusive unless set aside in a direct action brought for that purpose against the Railroad Commission of Texas and unless shown in such proceeding to be unjust and unreasonable by clear and satisfactory proof, which clear and satisfactory proof has been defined by the Supreme Court of the State of Texas, the court of highest and ultimate jurisdiction in said state, to be proof beyond a reasonable doubt. That said Supreme Court of the State of Texas has held that the Railroad Commission of Texas has with regard to the initiation and establishment of rates all powers possessed by the railways themselves prior to the creation of said Commission. That

from the date of its installation under the laws aforesaid the Railroad Commission of Texas has continuously exercised the powers conferred by said act and other acts of the legislature of the State of Texas amendatory thereof and supplementary thereto in the fixing of rates within the State of Texas, for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that state from points beyond the state were reduced in such manner as in the judgment of the Railroad Commission of Texas injuriously affected the interests of manufacturers, wholesalers, jobbers and others within that state.

VII.

That the rates fixed by the Texas Railroad Commission on all articles and commodities complained of by the Louisiana Commission were and are unjustly low and were less than just and reasonable rates. That in order to preserve the competitive territory of northeastern Texas lying between Dallas and the Arkansas-Texas and Louisiana-Texas state lines as a territory in which Dallas and other manufacturers and merchants might overcome competition from points without the state the Railroad Commission of Texas established distance rates which were 80 per cent. of their standard distance class rates and on a number of commodities applied the same percentage of their standard distance commodity rates over the following lines of railway: The Texas & Pacific Railway, Denison, Pacific & Suburban Railway east of and including

19 Denison, Sherman and Dallas, but not from Texarkana and Waskom and intermediate points; and between points on the Missouri, Kansas & Texas Railway Company of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points; and between points on the St. Louis Southwestern Railway Company of Texas east of and including Sherman, Plano and Dallas and north of and including Tyler, but not from Texarkana; said rate adjustment being set out in Circular No. 1178 of said Railroad Commission of Texas, effective September 7, 1900, as amended by Circular No. 1531, effective February 10, 1902, which said order is attached, marked Exhibit C and made a part hereof. The said Commission gave as its reason for the installation of said special rates of 80 per cent. of the standard distance rates applicable between other points within the State of Texas, that the inbound interstate rates to Shreveport and Texarkana were so far less than the inbound interstate rates to Dallas and other Texas distributing points that said cities and distributing points were unable to compete with said cities of Texarkana and Shreveport for the business of the intermediate towns, cities and communities. Your petitioners allege that the standard distance scale of rates of the Texas Commission on the classes and commodities involved herein for the several distances involved in the order of the Interstate Commerce Commission herein, by reason of the lack of density of traffic, and of the connection of said mileage scale of rates with the blanket or common point territory provided in the rules and regulations of the Texas Railroad

20 Commission are unjust and unreasonably low in and of themselves and that said 80 per cent. of said standard rates prescribed in said circular of the Railroad Commission of Texas hereinabove referred to is inherently unreasonable and unjust. That under the order of the Interstate Commerce Commission herein the rates prescribed in said Circular No. 1178 will become effective from Shreveport for similar distances on the line of the Texas & Pacific Railway, and that in order to compete for said traffic the same will necessarily be made effective upon the lines of the Missouri, Kansas & Texas Railway Company of Texas and the St. Louis Southwestern Railway Company of Texas and the St. Louis Southwestern Railway

Company, and that that adjustment will compel your petitioners to adopt said rates or to lose all traffic in the territory affected.

VIII.

That your petitioners and all of the Texas carriers, including those made parties to said petition of the Railroad Commission of Louisiana, recognized that the rates established by the Railroad Commission of Texas were unjust and unreasonable and protested against the same, but notwithstanding such protest said Commission installed said rates although they were unreasonably low and non-compensatory, and your petitioners and said Texas carriers have obeyed and accepted the same for the reason that non-observance thereof would have made them and each of them liable to prosecution and extreme and severe penalties, your petitioners being advised and believing that the making of intra-state rates was within

21 the exclusive jurisdiction of the Railroad Commission of Texas and then believing and now believing that the Interstate Commerce Commission was wholly without power, authority or jurisdiction to make such intra-state rates the legal measure of interstate rates. Your petitioners further allege that they accepted said rates so prescribed by the Railroad Commission of Texas for the reason that they were advised and believed that under the broad powers conferred upon the Railroad Commission of Texas it would be extremely difficult, if not wholly impossible, to set aside said rates without attacking the whole body of rates established and enforced by the Railroad Commission of Texas; and your petitioners aver that the Railroad Commission of Texas asserts and by its continuous practice has indicated that it has the right under the laws of said state to so adjust rates wholly within the State of Texas as to enable cities, towns and communities within said state to successfully compete with cities, towns and communities without said state, and on information and belief petitioners allege the fact to be that said Railroad Commission of Texas, if in its judgment it believes that the rates made by the order of the Interstate Commerce Commission herein complained of will injuriously affect the commerce of the cities and towns within the area covered by said order, will further reduce said intra-state rates in order to meet the competition created by the order herein complained of; and petitioners further aver that the order of the Interstate Commerce Commission herein complained of leaves petitioners and all other carriers affected thereby without relief in this: that the Railroad Commission of Texas continuously reduces

22 the intrastate rates in order to meet the interstate competition, whereupon the Interstate Commerce Commission reduces the interstate rates for the purpose of meeting the intra-state competition, whereby your petitioners and the other carriers affected must suffer the continuous reduction of rates not justified by proof or finding that the rates so reduced are unjust or unreasonable in and of themselves; that your petitioners being wholly without power to raise the intra-state rates so adopted by the Interstate Commerce

Commission as a legal measure of the justness of the interstate rates are wholly without remedy in the premises.

IX.

That said order of the Interstate Commerce Commission herein complained of provides that your petitioners shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance; that the State of Texas has a classification of its own in which most articles are differently classed from the classification provided in the Western Classification and in the great majority of instances carload minima in said Texas Classification are much less than in Western Classification and the mixtures are different under the Texas Classification, a jobber being able to substantially make his own mixture of any kind of freight, the result being that movement of freight under the Texas Classification is far more onerous upon
 23 the carriers than the movement of freight under the Western Classification and the rates received for carrying any given item of traffic returning less revenue to the carriers than if carried under Western Classification; that the Interstate Commerce Commission adopts the Western Classification in regard to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, but under the order of said Commission herein complained of your petitioners and all other carriers affected thereby, in applying to traffic moving out of Shreveport the rates established by the said order, will be compelled to adopt the Texas Classification, so that by the establishment of said rates the Interstate Commerce Commission has discriminated against your petitioners and other carriers affected thereby; that except as to Shreveport on interstate traffic moving from Western Classification territory into other parts of Texas the Western Classification will control. Said Western Classification has been adopted by the Louisiana Commission applying to freight moving from one point in the State of Louisiana to another point in the State of Louisiana, so that the order of the Interstate Commerce Commission discriminates in favor of Shreveport in Louisiana and works an unjust and unlawful discrimination against carriers handling the Shreveport traffic destined to Texas.

X.

Your petitioners show that there is a large traffic in the articles and commodities mentioned and described in said order of said Interstate Commerce Commission made in said case No. 3918 transported by petitioners from points outside of Texas through
 24 Shreveport and by your petitioners from distributing points in Texas to that portion of the territory covered by said order, for which transportation your petitioners now receive and have received a large revenue in the way of freight charges; that the order so promulgated by said Interstate Commerce Commission will materially reduce the receipts of your petitioners from such

transportation. Petitioners on information and belief aver the facts to be that the rates on a large amount of traffic in the territory along and adjacent to the Mississippi River are exceedingly low by reason of the fact that such traffic can be and is transported by water over said river and its tributaries and over the Gulf of Mexico and the waters with which it connects; that this is especially true with reference to interstate freight traffic; that the town of Shreveport, Louisiana, is situated on the Red River, which is a tributary of the Mississippi River, and is nearer the Mississippi River than the Texas distributing points referred to in said cause No. 3918, and that Shreveport is connected with the Mississippi River by several lines and roads of railway and is accorded lower rates on inbound freight by reason of its location as aforesaid than are accorded to distributing points in Texas mentioned and described in said cause No. 3918 and in the order made in said cause, and that, therefore, the City of Shreveport and the territory adjacent thereto receive and have the benefit of these lower rates, and that the interests in whose behalf the complaint was made in said cause No. 3918, and for whose benefit the order was entered therein, have and receive the benefits of the lower rates on freight traffic aforesaid, and that

25 when such rates are added to the outbound rates from Shreveport it will be found, as your petitioners are informed and believe, and on such information and belief allege the facts so to be, that the total transportation charge on the commodities and classes mentioned and described in said order, under existing rates, to the territory mentioned and described therein, handled by the said interests at Shreveport, will not be materially higher than the total transportation charge will be on the same commodity handled into the same territory from the distributing points in Texas directly affected by said order. Your petitioners are informed and believe, and on such information and belief allege the facts to be, that in most instances the total transportation charges are less. Your petitioners are further informed and believe, and on such information and belief allege the facts to be, that if said order of the Interstate Commerce Commission herein complained of is enforced that on the great volume of the freight traffic referred to by said order the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and will be much lower than the total transportation charges on freight traffic which moves into and out of the Texas distributing points to the said territory; that thereby a large amount of freight traffic now handled by your petitioners from Texas distributing points to said territory and from points outside of Texas other than Shreveport will be transferred to the business men of Shreveport from the distributing points in Texas aforesaid and from the distributing points outside of Texas other than Shreveport, and that in consequence thereof it will entail upon your petitioners large and substantial losses in freight revenue as is hereinafter more specifically set out.

26 Petitioners further show that by reason of the provisions of the laws regulating interstate commerce, and especially

the provisions of Section 4 of the said act as amended, and natural and competitive conditions as to water rates, rail rates and commercial competition, that the material reductions made from Shreveport to Texas points mentioned and described in said order will necessarily disturb and reduce freight rate conditions over a very large scope of territory; that your petitioners and other interested lines of railway have always heretofore tried to adjust fairly, justly and reasonably the interstate rates to and from all points in the Southwest so as to prevent unreasonable discriminations and unduly prejudicial conditions in any part of said southwestern territory; that a large proportion of the classes and commodities on which material reductions are made by such order of said Interstate Commerce Commission in said cause No. 3918 are transported into southwestern territory through various gateways leading thereto, such as Chicago, Kansas City, St. Louis, Little Rock, Memphis, Vicksburg, Shreveport, New Orleans, Galveston, and other minor gateways; that the material reductions made by said order on a portion of the line over one of the main channels leading to and from the low rates on the Mississippi River will of necessity produce a reduction in the transportation charges from many of the other gateways; that for many years rates from all defined territories into southwestern territory, including territory affected by the order in question, have been based on St. Louis, the rates from defined territories being made by adding or deducting certain differentials to or from the St. Louis rate; that the rates from Shreve-

27 port have always been a differential under the St. Louis rate; that if said rate is further reduced as is compelled by the order herein complained of, said reduction will of necessity force reductions in rates from St. Louis and the defined territories hereinabove referred to, or the great bulk of said business will flow through Shreveport and traffic flowing in through the other gateways above referred to will be greatly and materially reduced. Your petitioners therefore aver that said order of the Interstate Commerce Commission will effect a reduction in rates on practically all the classes and commodities described in said order to the entire State of Texas, and will effect a reduction in rates thereon to points in many other states in the Southwest and to the Republic of Mexico, all of which reductions in rates will result in a reduction in revenue of your petitioners and the other carriers affected thereby.

XI.

Your petitioners allege that if said order becomes effective the reduction in the annual revenues of your petitioners will be approximately \$25,000, of which \$20,000 will result from the reduction in the commodity rates, and petitioners further allege on information and belief that the reduction in the revenues of their affiliated lines, to wit: The Texas & New Orleans Railroad Company, The Houston & Texas Central Railroad Company and The Galveston, Harrisburg & San Antonio Railway Company, should said order become effective, will be approximately \$500,000.

Your petitioners allege that the aggregate, actual, present value

28 of their properties is not less than \$6,800,000; that the net earnings of your petitioners for the year ending June 30, 1911, after deducting interest on its bonded debt of \$3,000,000, were \$391,486.90, and for the year ending June 30, 1910, \$357,108.06, and that based upon its earnings and expenses from July 1, 1911, to February 1, 1912, petitioners are informed and believe, and on such information and belief allege the fact to be, that their net earnings, after deducting the interest on bonded debt as aforesaid, will not exceed \$204,069.20. Your petitioners therefore aver that the reductions made by the order herein complained of will not permit them to earn a reasonable or just return upon the value of their properties as alleged, and will amount to a confiscation thereof, and will operate to deprive them of their property without due process of law.

XII.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, these petitioners say:

(1) That the order of the Interstate Commerce Commission made in said cause No. 3918 fixing commodity rates upon the lines of your petitioners was made without power or authority either directly or indirectly conferred upon the Interstate Commerce Commission, because your petitioners say that, while under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States the Congress of the United States has power "to regulate commerce with foreign nations, among the several states and with the Indian tribes," the tenth amendment of the Constitution of the United States provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," and petitioners say that, while by said provisions power was conferred upon Congress to regulate interstate and foreign commerce and commerce with the Indian tribes, no power was conferred to regulate or interfere with intra-state commerce, and that this lack of power was fully recognized in the Act to Regulate Interstate Commerce as originally enacted and subsequently amended.

That by the first section of the Act to Regulate Commerce, it is provided "that the provisions of this Act shall apply to any corporation, * * * to any common carrier, or carriers, engaged in the transportation of passengers or property wholly by railroad, * * * from one state or territory of the United States, * * * to any other state or territory of the United States, * * * or from any place in the United States to an adjacent foreign country, etc." Your petitioners aver that this provision means that all the provisions in this Act to Regulate Commerce are limited to the commerce mentioned in this section, and respectfully show that this is made more evident by the proviso which is added to the first section, which declares "That the provisions of this Act shall not apply to the transportation of passengers or property * * * wholly within one state, etc."; whereby it is provided, as your petitioners aver, that none of the provisions, including the provision against

discrimination, shall apply in any manner whatsoever to the transportation of property wholly within one state, and that when
30 said Act was so amended as to confer upon the Interstate Commerce Commission power, after finding that any rates or charges, classifications, regulations or practices whatsoever, were unjust and unreasonable, or unjustly discriminatory or unduly prejudicial or preferential, or otherwise in violation of any provision of the Act to prescribe what would be just and reasonable, individual or joint rate, or rates, classifications, regulations or practices to be thereafter followed, that no power or authority was thereby conferred upon the Interstate Commerce Commission, or attempted to be conferred upon the Interstate Commerce Commission in any way prescribe rates, regulations or practices to be observed by common carriers with reference to transportation of property wholly within one state; and your petitioners aver that they are informed and believe, and charge the fact to be, that the order made by said Interstate Commerce Commission in said cause 3918, fixing commodity rates upon lines of your petitioners, was made without authority or power vested in said Commission to make the same, and is in violation of the Act to Regulate Commerce and the amendments thereof, and of the provisions of the Constitution of the United States, as hereinbefore set forth, and is therefore void.

(2) That said order of said Interstate Commerce Commission is, for the reasons hereinbefore set forth, unreasonable and unjust and, as no power or authority is conferred upon the Interstate Commerce Commission to make or promulgate or enforce any order that is unreasonable or unjust, said order is therefore void.

(3) Said order, in so far as same undertakes to fix and direct the
31 installation of commodity rates upon the lines of your petitioners, is invalid and void for the reason that there was no evidence before said Interstate Commerce Commission that the commodity rates complained of were unjust or unreasonable in and of themselves, and the order of said Interstate Commerce Commission wholly fails to find that said rates were unreasonable in and of themselves, and wholly fails to find that the commodity rates directed by the said Commission to be installed by your petitioners are reasonable within themselves, nor was there any evidence before the Interstate Commerce Commission by which said Commission could find that the rates so ordered to be installed were just or reasonable within themselves.

(4) That, for the reasons hereinbefore set forth, said order of said Interstate Commerce Commission deprives petitioners, and each of them, of their property without due process of law and is the taking of private property for public use without just compensation in violation of the fifth amendment of the Constitution of the United States, and is therefore void.

XIII.

Petitioners say that, as hereinbefore alleged, said order of the Interstate Commerce Commission becomes effective by its terms on the 1st day of June, 1912, and that if petitioners are compelled

to install and enforce the rates therein provided for, they and each of them will suffer irreparable damage.

Wherefore, your petitioners pray that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, and that on such final hearing the said order of said Commission of date March 11, 1912, be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives, be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof; that said rates so established by the Commission be declared to be unjust and unreasonable; and petitioners pray for general and special relief as the equities of the case may warrant.

(S'g'd)

BAKER, BOTTS, PARKER &
GARWOOD,

H. A. SCANDRETT,

Solicitors for Petitioners, Houston & Shreveport Railroad Company, Houston, East & West Texas Railway Company.

H. M. GARWOOD,

Of Counsel.

33 STATE OF ILLINOIS,
County of Cook, ss:

I, J. R. Christian, state upon oath that I am the General Freight Agent of the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company, petitioners in the above entitled and numbered cause, and as such am authorized to make this affidavit; that all allegations of fact set forth in said petition are true, and where alleged upon information and belief I believe them to be true.

(S'g'd)

J. R. CHRISTIAN.

Sworn and subscribed by the said J. R. Christian before me, the undersigned authority, this the 4th day of May, A. D. 1912.

[NOTARIAL SEAL.]

JESSIE F. PIERCE,

Notary Public in and for the County of Cook, State of Illinois.

My commission expires Dec. 19, 1912.

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EXHIBIT A.

Opinion No. 1813.

Before the Interstate Commerce Commission.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER,
Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Decided March 11, 1912.

Report and Order of the Commission.

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No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER,
Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Submitted January 16, 1912; Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers; Held,

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.
2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.
3. That if a state, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions, upon interstate traffic. To say that an interstate carrier may discriminate against interstate commerce

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because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.

4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.
5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendants' lines under like condition.

Walter Guion, R. G. Pleasant, W. M. Barrow, J. J. Meredith, George T. Atkins, Jr., and Luther M. Walter for complainants.

Baker, Botts, Parker & Garwood, H. A. Scandrett, and F. C. Dillard for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, E. B. Perkins, Hiram Glass, W. F. Murray, and Roy F. Britton for St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

37 A. S. Coke, A. H. McKnight, and J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, H. G. Herbel, and N. M. Leach for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, intervener.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and J. L. Williams for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadswick for Penola county, Tex., interests, interveners.

Report of the Commission.

LANE, Commissioner:

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

38 The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved.

Policy of the Texas Commission.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

"AUSTIN, TEXAS, September 12, 1911.

Mr. H. B. Pitts, Sec'y Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover.

For the local rates to be now reduced from Shreveport to
39 Texas points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours, respectfully,

ALLISON MAYFIELD, *Chairman.*"

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates. See *Commercial Club of Omaha v. C., R. I. & P. Ry. Co.*, 6 I. C. C. 675; *Daniels v. C., R. I. & P. Ry. Co.*, 6 I. C. C. 458; *Eau Claire Board of Trade case*, 5 I. C. C., 293; *Savannah Bureau of Freight & Transportation case*, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The

carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by re-

40 restrictive law attempted successfully to prescribe and define the channels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

"To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having

the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders."

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

"This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates." (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

"The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload

shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate system, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment."

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points

43 are not now so low as to cause the Texas commission to indulge the fears which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See *R. R. Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See Nineteenth Annual Report, R. R. Commission of Texas, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class-A, B, C, D, and E rates, was reduced to 20 per cent: 1. Between points on the Texas & Pacific Railway and the Denison & Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas

& Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

"Ruling. Rates provided in this adjustment are not available on shipments to or from Texarkana."

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

44 We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours truly,

J. R. CHRISTIAN, *G. F. A.*"

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

"Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission."

The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low-water

rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

The Problem Raised.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

45 With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over interstate commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers

upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities
46 regardless of the invisible state line which divides them."

To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

Power and Policy of Congress.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not

discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, *Northern Securities case*, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in *Gloucester Ferry case*, 114 U. S., 203, 204.)"

Construction of the Law.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly

discriminate so as to prefer a point in one state as against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress

with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers, under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or sub-

stantial sense by applying the requirements of these acts to
49 vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate. If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, Safety Appliance case, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such

carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally."

50 *Mondou v. N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, decided January 15, 1912. It is not merely the commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How

utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from *Gibbons v. Ogden*:

"It is not intended to say that these words comprehended that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states*. (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop* at the *jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines*. * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists*. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce 'among the several states.'* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

"There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of commerce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation."

Then is cited with approval language from the decision in *Hall v. De Cuir*, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

"The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: 'While it purports

only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the constitution was adopted."

52 Again the report quotes from *Brown v. Houston*, 114 U. S., 622.

"In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations."

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

"Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state."

In presenting the act to regulate commerce to the Senate the Cul-lom Committee said:

"The provisions of the bill are based upon theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against
53 which they were helpless. They appealed to no court for relief, nor to this Commission. When the state of Louisiana

after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own states cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

54

On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
	Miles.	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
	Miles.	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within
55 Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, *Chairman*, concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in *Reliance Textile & Dye Works v. S. Ry. Co.*, 13 F. C. C.,

48. In that proceeding the complainant contended that rates
56 from the mills to its dye works, combined with rates from its dye works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from cer-

tain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

"To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

* * * * *

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

In that proceeding the Commission failed to find the fact of discrimination, and no order was therefore required.

In *Saunders v. Southern Express Co.*, 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

57 There was no claim of any intent to prefer Mobile to

Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said that the reasonableness of the rates was being contested before the Alabama

commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with this order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In *Andy's Ridge Coal Co. v. S. Ry. Co.*, 18 I. C. C., 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from

58 certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no state

commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

59 Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the *Andy's Ridge* case was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through movement of the traffic from the points at which it is pro-

duced or manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently can never be settled until they have been passed upon by the court that is empowered to speak the last word. In this question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for inter-state transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory. * * *"

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substantial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field

61 for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Commission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may commend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore, 62 seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its interstate rates also run; the only duty it may perform is carefully to

ascertain and follow the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy by the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of Mr. Commissioner Clements and Mr. Commissioner McChord. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in *Saunders v. Southern Express*

Co., 18 L. C. C., 415, which presented the precise question in
63 an even more direct form, I had occasion carefully to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden upon such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of interstate commerce may forbid discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This, however, it has not yet undertaken to do. In my judgment the language of the proviso of section 1 admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the

right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McCHORD, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of traffic to undue or unreasonable prejudice or disadvantage. Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimination voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination, to determine whether or not the same was undue, and where we have found the situation to be one over which the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and, from the operation of this, carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some in-

stances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in *East Tenn., Va., & Ga. Ry. Co. v. I. C. C.*, 181 U. S., 1:

"The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers."

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reasonableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rate from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned is not undue. In considering, a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in *Saunders & Co. v. Southern Express Co.*, 18 I. C. C., 421, said:

"The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates."

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality, or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disad-

vantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

66 To my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not give to us power which has specifically been withheld. As we

67 look to the act of Congress rather than to the constitution for our powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase

"which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to an order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in *Howard v. I. C. R. Co.*, 207 U. S., 463, said:

"It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In *Sands v. Manistee River Improvement Co.*, 123 U. S., 288, the court, by Mr. Justice Field, said:

"Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

68 The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward co-ordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged with this Commission; and if not vested in Congress, the final remedy is to be found, as said in *Taylor v. Beckham*, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I

apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often *presuasive*, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I
69 would not further refer to it except for the great length with which the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the Pullman case, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the Pullman Company. The excerpt from *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S., 261, is quoted from *Haskell v. Cowham*, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the *Safety Appliance* case, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of *Gibbons v. Ogden*, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to Fulton and Livingston to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to intrastate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is wholly domestic or internal and gives to Congress exclusive control over the remainder."

70 The quotation from *Gibbons v. Ogden* would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to intermingle with. A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from *Gibbons v. Ogden*:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

"The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods

or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce."

In *Ames v. U. P. R. Co.*, 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

71 "Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates."

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states makes such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore leads by following the judgment of the state government, to whom it says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

"The fact which vitiates the provision is that it compels the car-

rier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. [L. & N. R. R. Co. v. Eubank, 184 U. S., 41.]”

72 To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

“That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.”

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unnecessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

73

APPENDIX.

EXHIBIT 1.

Class Rates Dallas, Tex., to Points on the Texas & Pacific Ry.

Station.	Dis- tance.	Class—									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Orphans' Home.....	7.4	13	12	10	8	6	7	6	5	5	4
Mesquite	12.1	15	13	12	10	7	8	6	5	5	4
Forney	20.3	17	15	13	11	9	10	8	6	6	5
Lawrence	27.8	20	18	16	14	12	13	11	9	7	6
Terrell	31.8	21	19	17	15	13	14	12	10	8	6
Elmo	38.3	23	21	19	17	15	16	14	11	9	7
Wills Point.....	47.4	26	24	22	20	17	18	15	12	10	8
Edgewood	54.6	29	27	25	23	19	20	17	14	12	9
Grand Saline.....	65.1	32	29	27	25	20	21	18	15	13	10
Mineola	78.2	37	34	32	30	23	24	21	18	14	11
Crow	89.2	40	37	35	32	24	25	22	19	15	12
Hawkins	95.7	42	39	36	33	25	26	23	20	16	13
Blg Sandy	101.4	44	41	38	35	26	27	24	21	16	13
Gladewater	111.5	48	45	41	39	28	29	26	23	17	14
Camps	117.1	50	47	43	41	29	30	27	24	18	15
Willow Springs	120.6	51	47	43	41	30	31	28	25	18	15
Longview	124.0	51	47	43	41	30	31	28	25	18	15
Hallsville	134.0	54	50	45	43	31	32	29	26	19	16
Marshall	147.9	57	53	48	46	33	34	31	27	19	16
Scottsville	155.6	59	55	50	48	34	35	32	27	20	16
Jonesville	163.7	61	56	51	49	35	36	33	28	20	16
Waskom	167.0	62	57	51	49	35	36	33	28	20	16
Greenwood	172.5	101	84	74	71	54	58	51	40	28	21
Shreveport	189.7	101	84	74	71	54	58	51	40	28	21

Class Rates Shreveport, La., to Points on the Texas & Pacific Ry.

Station.	Dis- tance.	Class—									
		1	2	3	4	5	A	B	C	D	E
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Waskom	22.7	39	27	23	23	23	23	22	17	13	9
Jonesville	26.0	40	28	24	24	24	24	23	17	14	9
Scottsville	34.1	43	30	26	26	26	26	24	18	14	9
Marshall	42.0	56	42	35	33	30	33	30	23	19	13
Hallsville	55.2	60	46	40	35	30	35	30	25	21	15
Longview	65.7	60	49	40	35	30	35	30	25	21	17
Willow Springs	69.1	85	71	55	47	44	47	41	36	25	18
Camps	72.6	85	71	55	47	44	47	41	36	25	18
Gladewater	78.2	85	71	59	50	48	50	45	36	25	18
Big Sandy	88.3	85	71	64	50	49	50	46	36	25	18
Hawkins	94.0	85	72	66	53	49	53	46	36	25	18
Crow	100.5	95	84	67	55	49	53	46	36	25	18
Mineola	111.5	79	64	58	55	47	48	44	36	25	18
Grand Saline	124.6	98	84	67	60	49	53	46	36	25	18
Edgewood	135.1	98	84	67	60	49	53	46	36	25	18
Wills Point	142.3	98	84	67	60	49	53	46	36	25	18
Elmo	151.4	105	92	74	71	54	58	51	40	28	21
Terrell	157.9	105	92	74	71	54	58	51	40	28	21
Lawrence	161.9	105	92	74	71	54	58	51	40	28	21
Forney	169.4	105	92	74	71	54	58	51	40	28	21
Mesquite	177.6	105	92	74	71	54	58	51	40	28	21
Orphans' Home	182.3	105	92	74	71	54	58	51	40	28	21
Dallas	189.7	101	84	74	71	54	58	51	40	28	21

74 Class Rates Houston, Tex., to Points on the Houston, East & West Texas Ry.

Station.	Dis- tance.	Class—									
		1	2	3	4	5	A	B	C	D	E
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Humble	17.1	16	14	12	10	8	9	7	6	5	5
Pauli	21.9	18	16	14	12	10	11	9	7	6	5
New Caney	28.3	20	18	16	14	12	13	11	9	7	6
Midline	36.5	23	21	19	17	15	16	14	11	9	7
Cleveland	43.2	25	23	21	19	17	18	15	12	10	8
Shepherd	55.3	29	27	25	23	19	20	17	14	12	9
Goodrich	63.4	32	29	27	25	20	21	18	15	13	10
Livingston	71.5	34	31	29	27	21	22	19	16	13	10
Leggett	79.7	37	34	32	30	23	24	21	18	14	11
Valda	83.7	38	35	33	30	23	24	21	18	14	11
Moscow	87.5	40	37	35	32	24	25	22	19	15	12
Carrigan	93.0	41	38	35	32	25	26	23	20	16	13
Renova	103.1	45	42	39	36	27	28	25	22	17	14
Lufkin	118.2	50	47	43	41	29	30	27	24	18	15
Angelina	126.4	52	48	44	42	30	31	28	25	18	15
Nacogdoches	138.3	55	51	46	44	32	33	30	26	19	16
Appleby	147.4	57	53	48	46	33	34	31	27	19	16
Garrison	158.4	60	56	51	49	34	35	32	28	20	16
Timpson	166.8	62	57	51	49	35	36	33	28	20	16
Teneha	176.4	65	60	54	52	37	38	35	29	21	16
Joaquin	187.9	67	62	56	54	38	39	36	30	21	16
Shreveport	230.7	60	50	40	30	22	25	20	17	16	15

Class Rates Shreveport, La., to Points on the Houston, East & West Texas Ry.

Station.	Dis- tance.	Class—									
		1	2	3	4	5	A	B	C	D	E
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Joaquin	42.8	40	28	24	24	24	24	23	17	14	9
Teneha	54.3	51	42	34	31	26	28	24	21	19	15
Timpson	63.9	52	43	35	33	27	29	25	22	20	15
Garrison	72.3	56	47	39	36	30	32	28	24	21	15
Appleby	83.3	61	52	43	39	34	36	32	25	21	15
Nacogdoches	92.4	66	57	48	43	38	41	36	25	21	15
Angelina	104.3	68	58	50	47	40	44	37	27	22	15
Lufkin	112.5	69	59	50	47	40	44	37	29	22	15
Renova	127.6	74	65	54	52	42	45	39	31	22	18
Corrigan	137.7	77	67	54	52	42	45	39	31	22	18
Moscow	143.2	82	71	54	52	42	45	39	31	22	18
Valda	147.0	84	71	54	52	42	45	39	31	22	18
Leggett	151.0	84	71	54	52	42	45	39	31	22	18
Livingston	159.2	85	71	54	52	42	45	39	31	22	18
Goodrich	167.3	85	71	54	52	42	45	39	31	22	18
Shepherd	175.4	85	71	54	52	42	45	39	31	22	18
Cleveland	187.5	85	71	54	52	42	45	39	31	22	18
Midline	194.2	85	71	54	52	42	45	39	31	22	18
New Caney	203.4	85	71	54	52	42	45	39	31	22	18
Pauli	208.8	85	71	54	52	42	45	39	31	22	18
Humble	213.6	85	71	54	52	42	45	39	31	22	18
Houston	230.7	85	71	54	52	42	45	39	31	22	18

NOTE 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.

NOTE 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.

NOTE 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

Comparison of Rates Paid by Wholesale Grocers at Shreveport and by Their Texas Competitors to Common Destinations.

From—	To—	Dist. Miles.	Sugar. Cents.	Flour. Cents.	Grain. Cents.	Hay. Cents.	Canned goods. Cents.	Lard Com- pounds. Cents.	Green coffee. Cents.	Bag- ging. Cents.	Ties, carload. Cents.	Bagging and ties; Ex- Cheese. tracts. Cents.	Cents.
Nacogdoches...	Joaquin.....	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	25.0
Shreveport....	do.....	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	28.0
Nacogdoches...	Teneha.....	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	21.0
Shreveport....	do.....	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	31.0	31.0	24.5	42.0
Nacogdoches...	Timpson.....	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	17.0
Shreveport....	do.....	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	33.0	33.0	24.5	43.0
Nacogdoches...	Center.....	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	32.0
Longview.....	do.....	67.8	26.0	25.5	25.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	30.0
Shreveport....	do.....	65.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	35.0	35.0	24.5	49.0
Longview.....	Backville.....	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	17.0
Shreveport....	do.....	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	49.0
Marshall.....	Elysian Fields..	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	14.0
Shreveport....	do.....	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0
Texasarkana...	Marshall.....	66.7	26.0	25.5	25.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	30.0
Shreveport....	do.....	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	42.0
Texarkana.....	Jefferson.....	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	26.0
Marshall.....	do.....	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	14.0
Shreveport....	do.....	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	42.0
Longview.....	San Augustine..	87.2	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	38.0
Nacogdoches...	do.....	69.1	32.0	32.0	32.0	29.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0
Shreveport....	do.....	120.5	38.0	38.0	38.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	52.0
Pittsburgh....	Avinger.....	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	19.0
Shreveport....	do.....	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	51.0
Texasarkana...	Atlanta.....	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	16.0
Shreveport....	do.....	60.8	35.0	35.0	35.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0
Marshall.....	Waskom.....	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	15.0
Shreveport....	do.....	20.5	23.0	23.0	23.0	23.0	23.0	23.0	23.0	9.0	9.0	39.0	27.0

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EXHIBIT 3.

Comparison of Rates Paid by Wholesale Saddlery and Vehicle Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Distance.	Wagons.	Buggies.	Saddles.	Harness.	Horse colars.	Leather.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas.....	Jonesville.....	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport....	do.	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas.....	Marshall.....	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport....	do.	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas.....	Elysian Fields..	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport....	do.	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas.....	Teneha.....	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport....	do.	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas.....	Joaquin.....	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport....	do.	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of Rates Paid by Furniture and Stationery Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Distance.	Stationery.	Document files, k. d.	Sales books, cash slips.	Talking machine records.	Iron parts, office chairs.	Furniture, new, c. 1.
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Dallas.....	Nacogdoches....	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston.....	do.	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport....	do.	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas.....	Tyler.....	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston.....	do.	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport....	do.	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas.....	San Augustine..	211.9	80.0	72.0	60.0	80.0	58.0	46.0
Galveston.....	do.	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport....	do.	85.0	61.0	52.0	43.0	61.0	39.0	36.0
Dallas.....	Longview.....	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston.....	do.	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport....	do.	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Pittsburgh.....	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston.....	do.	320.9	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	do.	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas.....	Clarksville.....	130.8	61.0	56.0	40.8	61.0	48.0	28.8
Galveston.....	do.	392.3	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	do.	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas.....	Carthage.....	160.6	69.0	63.0	57.0	69.0	54.0	40.0
Galveston.....	do.	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport....	do.	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Mineola.....	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston.....	do.	288.4	86.0	77.0	65.0	86.0	61.0	48.0
Shreveport....	do.	111.5	79.0	64.0	58.0	79.0	55.0	48.0

EXHIBIT 4.

General Tariff of Class Rates, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.
The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

Section 1.—Table of Rates.

(Rates, in cents per 100 pounds, to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in Sections 2, 3, and 4 of this tariff.)

Distances, Miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
10 and less.....	13	12	10	8	6	7	6	5	5	4
12 and over 10.....	14	12	11	9	6	7	6	5	5	4
15 and over 12.....	15	13	12	10	7	8	6	5	5	4
18 and over 15.....	16	14	12	10	8	9	7	6	5	5
21 and over 18.....	17	15	13	11	9	10	8	6	6	5
24 and over 21.....	18	16	14	12	10	11	9	7	6	5
27 and over 24.....	19	17	15	13	11	12	10	8	7	6
30 and over 27.....	20	18	16	14	12	13	11	9	7	6
33 and over 30.....	21	19	17	15	13	14	12	10	8	6
36 and over 33.....	22	20	18	16	14	15	13	10	8	7
39 and over 36.....	23	21	19	17	15	16	14	11	9	7
42 and over 39.....	24	22	20	18	16	17	14	11	9	7
45 and over 42.....	25	23	21	19	17	18	15	12	10	8
48 and over 45.....	26	24	22	20	17	18	15	12	10	8
51 and over 48.....	27	25	23	21	18	19	16	13	11	8
54 and over 51.....	28	26	24	22	18	19	16	13	11	9
57 and over 54.....	29	27	25	23	19	20	17	14	12	9
60 and over 57.....	30	28	26	24	19	20	17	14	12	9
63 and over 60.....	31	28	26	24	20	21	18	15	13	10
66 and over 63.....	32	29	27	25	20	21	18	15	13	10
69 and over 66.....	33	30	28	26	21	22	19	16	13	10
72 and over 69.....	34	31	29	27	21	22	19	16	13	10
75 and over 72.....	35	32	30	28	22	23	20	17	14	11
78 and over 75.....	36	33	31	29	22	23	20	17	14	11
81 and over 78.....	37	34	32	30	23	24	21	18	14	11
84 and over 81.....	38	35	33	30	23	24	21	18	14	11
87 and over 84.....	39	36	34	31	24	25	22	19	15	12
90 and over 87.....	40	37	35	32	24	25	22	19	15	12
93 and over 90.....	41	38	35	32	25	26	23	20	16	13
96 and over 93.....	42	39	36	33	25	26	23	20	16	13
99 and over 96.....	43	40	37	34	26	27	24	21	16	13
102 and over 99.....	44	41	38	35	26	27	24	21	16	13
105 and over 102.....	45	42	39	36	27	28	25	22	17	14
108 and over 105.....	46	43	40	37	27	28	25	22	17	14
111 and over 108.....	47	44	40	38	28	29	26	23	17	14
114 and over 111.....	48	45	41	39	28	29	26	23	17	14
117 and over 114.....	49	46	42	40	29	30	27	24	18	15
120 and over 117.....	50	47	43	41	29	30	27	24	18	15
124 and over 120.....	51	47	43	41	30	31	28	25	18	15
128 and over 124.....	52	48	44	42	30	31	28	25	18	15
132 and over 128.....	53	49	45	43	31	32	29	25	18	15
136 and over 132.....	54	50	45	43	31	32	29	26	19	16
140 and over 136.....	55	51	46	44	32	33	30	26	19	16
144 and over 140.....	56	52	47	45	32	33	30	26	19	16

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Distances, Miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
148 and over 144.....	57	53	48	46	33	34	31	27	19	16
152 and over 148.....	58	54	49	47	33	34	31	27	19	16
156 and over 152.....	59	55	50	48	34	35	32	27	20	16
160 and over 156.....	60	56	51	49	34	35	32	28	20	16
164 and over 160.....	61	56	51	49	35	36	33	28	20	16
168 and over 164.....	62	57	51	49	35	36	33	28	20	16
172 and over 168.....	63	58	52	50	36	37	34	29	20	16
176 and over 172.....	64	59	53	51	36	37	34	29	21	16
180 and over 176.....	65	60	54	52	37	38	35	29	21	16
184 and over 180.....	66	61	55	53	37	38	35	30	21	16
188 and over 184.....	67	62	56	54	38	39	36	30	21	16
192 and over 188.....	68	63	57	55	38	39	36	30	21	16
196 and over 192.....	69	64	58	56	39	40	37	31	22	17
200 and over 196.....	70	65	58	56	39	40	37	31	22	17
205 and over 200.....	71	65	58	56	40	41	37	31	22	17
210 and over 205.....	72	66	59	57	40	41	38	32	22	17
215 and over 210.....	73	67	59	57	41	42	38	32	22	17
220 and over 215.....	74	68	59	57	41	42	38	32	22	17
225 and over 220.....	75	69	59	57	42	43	39	33	23	17
230 and over 225.....	76	70	60	58	42	43	39	33	23	17
235 and over 230.....	77	70	60	58	43	44	39	33	23	17
240 and over 235.....	78	71	60	58	43	44	40	34	23	17
245 and over 240.....	79	71	60	58	44	45	40	34	23	17
Over 245.....	80	72	60	58	44	46	40	34	23	17

Section 2.—Joint Rates.

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, Section 1, of this tariff, the following, viz.:

Class	1	2	3	4	5	A	B	C	D	E
Rate	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz.:

Class	1	2	3	4	5	A	B	C	D	E
Rate	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, Section 3, of this tariff.

NOTE.—The term "common point-territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

79 Exception 1 to note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910.)

Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 11th Day of March, A. D. 1912.

Charles A. Prouty,
Judson C. Clements,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
Commissioners.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER,
Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN Railway Company of Texas, Burts Ferry, Browndel & Chester Railway Company, Eastern Texas Railroad Company, The Texas & Pacific Railway Company, Gulf, Colorado & Santa Fe Railway Company, Houston & Shreveport Railroad Company, The Houston, East & West Texas Railway Company, Texas & New Orleans Railroad Company, The Missouri, Kansas & Texas Railway Company of Texas, Texarkana & Fort Smith Railway Company, The Kansas City Southern Railway Company, The Texas & Gulf Railway Company, Marshall & East Texas Railway Company, Timpson & Henderson Railway Company, Shreveport, Houston & Gulf Railroad Company, Texas Southeastern Railroad Company, Caro Northern Railway Company, The Nacog-

80 doches & Southeastern Railroad Company, International & Great Northern Railroad Company, and Thomas J. Freeman, Receiver Thereof; Groveton, Lufkin & Northern Railway Company, Moscow, Camden & San Augustine Railway, Jefferson & Northwestern Railway Company, The Gulf & Interstate Railway Company of Texas, The Galveston, Harrisburg & San Antonio Railway Company, Galveston, Houston & Henderson Railroad Company, The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and

the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendant The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

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On the Texas & Pacific Railway.

Class rates in cents per 100 pounds.

From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.....	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

On the Houston, East & West Texas Railway.

Class rates in cents per 100 pounds.

From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton

within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

By the Commission:

[SEAL.]

JOHN H. MARBLE, *Secretary.*

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EXHIBIT B.

Extracts from Texas Statutes.

Art. 4562, Paragraphs 4 and 8 (R. S. 1895). May fix different rates.—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

May alter, abolish, etc.—The Commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

Art. 4564 (R. S. 1895). Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter. (Ib., Sec. 5.)

Art. 4565 (R. S. 1895). When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court, at either of its terms, and said action

so appealed shall have precedence in said Appellate Court
85 of all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Ib., Sec. 6.)

Art. 4566 (R. S. 1895). Burden of proof.—In all trials under the foregoing article the burden of proof shall rest upon the plain-

tiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 4571, Paragraph 3 (R. S. 1895). Duty as to through freights.—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Art. 4573 (R. S. 1895). Penalty for extortion.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

Art. 4575 (R. S. 1895). Liability under this chapter; venue.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad

shall be liable to the person or persons, firm or corporation
86 injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation.

Art. 4576 (R. S. 1895 as amended in 1901). Penalty when not otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty

has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for every such act of violation it shall pay to the State of Texas a penalty of not more than \$5,000.

Art. 4581-*a* (R. S. 1895). Emergency freight rates.—In addition to the powers conferred on the Railroad Commission of Texas by Articles 4563 and 4567 of the Revised Statutes of this state, said Commission shall have power, when deemed by it necessary, to stop or prevent interstate rate wars and injury to the business or interests of the people or railroads of this state, or in case of any other emergency, to be judged of by the Commission; and it shall be its duty, after three days' notice to the roads interested, to alter, amend or suspend any existing freight rate on any railroad in this state, or to fix freight rates where none exist.

Art. 4581-*b* (R. S. 1895). May apply to one or more roads or parts of roads.—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the Commission.

Art. 4581-*c* (R. S. 1895). Rates take effect and remain in force, etc.—Said rates, so made, shall take effect at such time, and remain in force for such length of time, as may be prescribed by the Commission.

87 Act of July 12, 1907. Power to make emergency rates.—

That in addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff and to establish freight and passenger tariffs, rules and regulations for temporary use to have immediate effect where none exists.

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EXHIBIT C.

Rate Adjustment.

Portions of Texas & Pacific, St. Louis Southwestern Railway of Texas, and Missouri, Kansas & Texas Railway of Texas.

Circular No. 1178, effective September 7, 1900, and as amended by Circular No. 1531, effective February 10, 1902.

The charges for transporting shipments of the articles named in the following list, between points on the lines of railroad described below, shall be made at eighty (80) per cent. of the current rates on such articles:

Railroads upon which the adjustment of rates applies:

1. Between points on the Texas & Pacific Railway, and the Denison & Pacific Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana, Waskom and intermediate points on the Texas & Pacific Railway.

2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points on the Missouri, Kansas & Texas Railway of Texas.

3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano and Dallas, and north of and including Tyler, but not from Texarkana.

List of Articles Subject to the Adjustment of Rates.

Carload and less than carload shipments of all articles which are, in carloads, subject to fifth-class and class A, B, C, D and E rates.

Carload and less than carload shipments of:

Agricultural implements, including hand implements, plow points and other parts of agricultural implements, rough or finished, and wagons (farm) or parts of same, rough or finished.

Axes, in boxes.

Bagging for baling cotton (less than carload only).

Candy, invoice value 10 cents or less per pound.

Canned goods, consisting of canned fruits and vegetables, canned fish, lobsters, crabs, shrimps and clams, canned soup, broth, clam juice, cove oysters, canned syrup, jellies and preserves, in boxes, barrels or crates.

89 Cotton bale ties and buckles (carloads and less than carloads).

Cotton factory products.

Crackers.

Furniture, new, all kinds.

Glass, window, loaded in box cars.

Glassware, all kinds, except cut glassware.

Glucose, glucose syrup and grape syrup.

Iron and steel articles:

Architectural iron, including columns, pedestals, capitals, plates, saddles, door and window jambs, sills and lintels, rolled beams, angle bars and girders.

Axes, carriage or wagon.

Bolts, in boxes, barrels, casks or drums.

Boiler and plate iron and steel.

Carriage and wagon skeins and boxes in barrels, casks or kegs.

Castings, not machinery.

Chains, in bundles or casks.

Crowbars.

Fence posts.

Harrow teeth.

Hay bale ties.

Jail plate.

Kilns, lime, or parts thereof, manufactured of sheet or boiler iron, with cast iron doors and door frames; grates and floors, K. D., crated, boxed or in bundles.

Lap rings.

Mattocks, in bundles.

Nails, cut or wire.

Nails, horse and mule shoe, in boxes or kegs.

Nuts, in boxes, barrels, casks or drums.

Picks, in bundles, barrels or casks.

Pipe, wrought, couplings and connections.

Plow steel, unfinished.

Poles, electric light or railway.

Rivets, in boxes or kegs.

Roofing, black, plain, corrugated or painted.

Sad irons, in bundles, boxes or casks.

Sash weights.

Sheet iron.

Shoes, horse or mule, in kegs.

Shutters.

90 Spikes, cut or wire.

Staples, in barrels, boxes or kegs.

Shingle bands, in bundles.

Skelp iron.

Sledges, in bundles (without handles).

Strap hinges, in barrels or kegs, invoice value $2\frac{1}{2}$ cents or less per pound.

Washers, in boxes, barrels, casks or drums.

Wire, barbed or telegraph (not copper).

Wagon tires.

Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.

Matches.

Packing house products.

Paints, dry or in oil.

Peanuts.

Rice.

Rope.

Shot.

Soap, common.

Soda, bi-carbonate of, and soda ash.

Starch.

Stoves and hollow ware, grates, fenders and baskets.

Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.

Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.

Tobacco, plug, in packages weighing less than sixty pounds each.

Trunks, empty, N. O. S.

Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.

Woodenware, viz.: Wooden bale boxes, barrel covers, barrel- (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, 91 clothes pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

Exception.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)

(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

In the United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

v.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, Respondents.

Answer of the United States.

(Filed May 29, 1912.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

III.

The Interstate Commerce Commission expressly found that "The class rates of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge." As to whether other rates prescribed by the Texas Commission were or are unreasonably low, respondent denies knowledge or information sufficient to form a belief, and respectfully suggests to the court that the question is immaterial.

IV.

Respondent further denies knowledge or information sufficient to form a belief as to the following allegations of the petition:

(1) As to petitioner's reasons for not attacking, either in the courts or before the Interstate Commerce Commission, the rates set by the Railroad Commission of Texas. (Petition, sec. VIII.)

(2) As to any indirect effect of the order upon other carriers not parties thereto. (Petition, p. 11.)

(3) As to any alleged general disturbance of freight rates, classifications, and traffic movement in southwestern territory, and as

to any alleged losses of revenues to petitioners, consequent upon the order complained of. (Petition, secs. IX, X, and XI.)

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V.

Respondent has no knowledge or information sufficient to form a belief as to the intentions or future actions of the Texas Railroad Commission.

VI.

For the purposes of this case, respondent admits the allegations of fact in the petition which are not specifically referred to above and which are not inconsistent with the findings made by the order and report of the commission.

VII.

And now, having fully answered the petition, this respondent prays that said petition be dismissed at the petitioners' costs and for such other and further orders as may be appropriate in the premises.

WINFRED T. DENISON,

Assistant Attorney General.

May, 1912.

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In the United States Commerce Court.

In Equity. No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of Interstate Commerce Commission.

(Filed May 18, 1912.)

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much of such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

This respondent, which for convenience will be referred to hereinafter as the commission, admits that it made and entered the order dated March 11, 1912, and included in Exhibit A to the petition herein, in a proceeding then pending before it, wherein J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, were complainants, and the petitioners herein and certain other carriers were

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defendants, and alleges that said order was duly served upon said defendants.

The commission further alleges that in the complaint in said proceeding it was alleged that the present class rates maintained, exacted and collected by said petitioners, and by the Texas & Pacific Railway Company, for the transportation of traffic from Shreveport, in the State of Louisiana, to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves.

The commission further alleges that in said complaint it was alleged that the rates maintained, exacted and collected by said Texas & Pacific Railway Company, in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said company, in each instance, for the transportation of like traffic equal distances in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas.

97 The commission further alleges that in said complaint it was alleged that the rates maintained, exacted and collected by said petitioners, in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said petitioners, in each instance, for the transportation of like traffic equal distances in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston.

The commission further alleges that in said complaint it was alleged that the rules and practices applied by said petitioners and said Texas and Pacific Railway Company in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said petitioners and said Texas & Pacific Railway Company in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas.

98 The commission further alleges that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered

by the allegations contained in said complaint were submitted to the commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the commission for determination, whereupon, the commission determined said matters and made a report which included the commission's decision, conclusions, order and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon the evidence aforesaid and as shown in and by said report and said order, the commission found that the present class rates maintained, exacted, and collected by said petitioners and by the Texas & Pacific Railway Company, for the transportation of traffic from Shreveport to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates

maintained, exacted, and collected by the said Texas & Pacific
99 Railway Company, in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said company, in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas; that the rates maintained, exacted and collected by said petitioners, in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said line intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said petitioners, in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said petitioners and said Texas & Pacific

100 Railway Company in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said petitioners and said Texas & Pacific Railway Company in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas; and further found that the reasonable class rates to be charged as maxima in the future by said petitioners and by said Texas & Pacific

Railway Company for two years from and after May 1, 1912, in lieu of the present class rates of said petitioners and said Texas & Pacific Railway Company would be the rates named in said order, and that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition herein.

The commission further alleges that the rates named as maxima in said order will furnish to said petitioners and to said Texas & Pacific Railway Company full, reasonable, fair, and just compensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition.

The commission further alleges that said order was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the commission denies each of and all the allegations to the contrary contained in said petition.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and thereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor*.

102 CITY OF WASHINGTON,
District of Columbia, ss:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 18th day of May, 1912.

[NOTARIAL SEAL.]

H. S. MILSTEAD,
Notary Public.

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In the United States Commerce Court.

No. 67. In Equity.

HOUSTON, EAST & WEST TEXAS RAILWAY CO. and HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

VS.

THE UNITED STATES OF AMERICA, Respondent.

Petition of Intervention of the Missouri, Kansas & Texas Railway Company of Texas.

(Filed May 27, 1912.)

To the Honorable the Judges of the United States Commerce Court:

The Missouri, Kansas & Texas Railway Company of Texas (hereinafter called petitioner), a corporation duly and legally incorporated under the laws of the State of Texas, with its principal office and place of business in the City of Dallas, said State, by leave of the court files this, its petition of intervention, in the above entitled and numbered cause, and thereupon complains and says:

I.

Petitioner is a carrier by railroad, engaged in the carriage of freight and passengers between points in the State of Texas, and between points in the State of Louisiana, and between points in the State of Texas and in the State of Louisiana and the various other States and Territories of the United States and foreign countries; and it has been such carrier, engaged in the handling of such commerce, during the time of all the happenings hereinafter referred to and was for many years prior thereto. The tariffs, rates, charges, classifications, regulations and practices observed and enforced by it in the conduct of the aforesaid business have been legally established, filed and observed, and the said rates, charges, classifications, regulations and practices were, as petitioner is informed and charges, just, fair and reasonable as to all parties, places, communities and states interested therein.

II.

Heretofore, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against petitioner and other carriers engaged in commerce between points in Louisiana and points in the State of Texas, said cause being number 3918 on the docket of said Interstate Commerce Commission. Said petition was filed on behalf of various merchants, manufacturers, jobbers and other shippers residing in the City of Shreveport. Complaint was made that the defendants had in effect rates between points in Texas on various

classes and commodities which were lower than the rates in effect between Shreveport and Texas points for equal distances, and that the Texas points were in competition with Shreveport. It was further alleged: "The said rates between said Shreveport and

105 said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates, would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas. As a result of said unlawful rates, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said Eastern Texas."

The petition prayed for an order requiring defendants to cease and desist from the alleged discrimination against Shreveport interests and prescribing just and reasonable rates between Shreveport and the various Texas points in the petition named on all the classes and commodities therein referred to.

Answers were filed to said petition by various defendants, among others by petitioner, which answers, among other things, denied that the Shreveport business interests on whose behalf the said complaint was filed were unable to do business in Texas, as alleged in the petition, because of any rate or rate adjustment applied or enforced by the defendants, and that the rates and regulations complained of were unjust, unreasonable or unduly discriminatory. On the contrary, the said rates and regulations of the defendants, it was averred, were just, reasonable and non-discriminatory. It was further averred that the rates applicable between points in Texas were prescribed by the Railroad Commission of Texas and the same were improper and unduly low and were applied by the carriers under protest.

By permission of the Interstate Commerce Commission
106 numerous pleas of intervention were filed by shippers and commercial bodies in the State of Louisiana, such shippers and commercial bodies joining in the prayer of complainants.

III.

Testimony was taken and arguments were made in the case, and the same was submitted to the Interstate Commerce Commission, January 26, 1912. Thereafter, on March 11, 1912, the Commission handed down its report and order in said cause, four members of the Commission holding with complainants as hereinafter stated and three members dissenting from such holding.

IV.

The opinion of the majority of the Interstate Commerce Commission, after briefly stating the case, sets forth what is referred to as the policy of the Railroad Commission of Texas and, after quoting a number of utterances of the Texas Commission, it, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the North and the East into Texas were pursuing a policy hostile to the development of that State. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other States and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind, the Texas Commission sought to establish a Texas policy and to make the railroads within that State contribute in the manner believed by her own people to best subserve their own interests."

Further discussion of the policy of the Texas Commission is had and the opinion then states:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The conclusion is then announced that the Interstate Commerce Commission has no authority to require an interstate carrier to put into effect from an interstate point a schedule of State-made rates as such, that its authority is limited to condemning unreasonable rates and fixing in their stead maximum rates that are just and reasonable, after which the following questions are propounded:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a State by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining State?"

The answer is given that the Interstate Commerce Commission has power to prevent discrimination caused by the application of lower State rates than interstate rates where shippers under the two classes of rates come in competition with each other.

The following conclusions are then announced:

"We find:

"(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

"(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

"On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance, miles.	Class rates in cents per 100 lbs.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16

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Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

"On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, miles.	Class rates in cents per 100 lbs.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17

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Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

"(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

"(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

"(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under Western Classification.

"(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

"(7) That the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

"It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

"As to the matter of the concentration of Texas cotton at
111 Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

Two concurring opinions were filed and three dissenting opinions. The dissenting opinions announce the proposition that the Interstate Commerce Commission has no authority to control State rates or to adopt State rates as measures of interstate rates unless the interstate rates complained of are unreasonable and the State rates are reasonable, and, therefore, the order of the Commission was without lawful authority, null and void.

In accordance with the opinion of the majority, an order was entered making effective the conclusions so announced, the same to become operative on or before May 1, 1912, and to remain in force for a period of not less than two years thereafter. The effective date of said order was later, on April 19, 1912, extended to June 1, 1912, and later to July 1, 1912.

A copy of the report and order of the Interstate Commerce Com-

mission in said cause No. 3918 is attached to the petition of Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company, hereinafter called original petitioners, and reference is here made thereto and the Court is asked to consider the same as if fully set out herein.

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V.

While the order of the Interstate Commerce Commission is by its terms directed only against the original petitioners and The Texas & Pacific Railway Company, petitioner is interested in the controversy or question before the Interstate Commerce Commission and is affected by said order in this:

1. That it operates a line of railroad extending from the City of Dallas, Texas, through the Cities of Greenville, Sulphur Springs, Pittsburg, Jefferson and Waskom, Texas, to the City of Shreveport, Louisiana, with a line extending from the said City of Greenville to the City of Mineola, Texas, and handles business thereover in competition with The Texas & Pacific Railway Company. The two companies have the following points in common between Dallas and Shreveport, viz.: Mineola, Jefferson and Waskom. By reason of these competitive points petitioner must apply the same rates from Shreveport thereto as are in effect over The Texas & Pacific Railway, and because of the application of such rates at competitive points the same basis must be applied at many other points on its line between Shreveport and Dallas, if not at all other such points. Should petitioner not meet the rates of its competitor the latter would get the business, thereby entailing upon petitioner even greater loss.

2. That the line of petitioner connects at the Red River north of Denison, Texas, with a line of Missouri, Kansas & Texas Railway Company, the lines of which two companies, together with the Texas Central Railroad, constitute what is commonly called the Missouri, Kansas & Texas Railway System. The lines of this system extend from St. Louis and Kansas City on the north through Parsons, Kansas, and Oklahoma City and Muskogee, Oklahoma, to and

113 through Denison, Sherman, Bonham, Wichita Falls, Greenville, Dallas, Fort Worth, Hillsboro, Waco, Temple, Austin, San Antonio, Houston, Galveston and many other points in Texas, and a large part of the revenues of the said system are derived from the handling of business interchanged between petitioner and Missouri, Kansas & Texas Railway Company at Red River and originating at St. Louis and Kansas City or moving on rates based on such points, and much other revenue accruing to the system is derived from business handled in connection with other railway companies through Chicago, Little Rock, Memphis, Vicksburg, New Orleans, Galveston and other gateways. For many years rates from all defined territories into Southwestern territory, which includes the territory affected by the order in cause No. 3918, have been based on St. Louis, such rates being made by adding or deducting certain differentials to or from the St. Louis rates. The rates from Shreveport have, during all this time, been a differential under the St. Louis rate. The relation of rates from Shreveport to Texas points (not

only those mentioned in the aforesaid order but practically all other points in the State) is such that because of the provisions of the Act to Regulate Commerce, and especially the fourth section thereof, and because of the natural and competitive conditions as to water rates, rail rates and commercial competition, any material reduction in the rates from Shreveport to the Texas points described in said order of the Interstate Commerce Commission will necessarily reduce rates on business moving through the gateways mentioned (a) to the territory so described; (b) to practically all other points in the State of Texas, and (c) to various points in other States in the

Southwest and in the Republic of Mexico, all of which reductions in rates will result in a decrease in the revenues of petitioner and of the system of which it forms a part. If the Shreveport rates are not met a large part of the business now handled by the Missouri, Kansas & Texas Railway System will move through Shreveport and over other lines on account of the readjustment of commercial conditions to meet the changed rate situation.

VI.

In the aforesaid petition filed before the Interstate Commerce Commission complaint is made of both the class and commodity rates from Shreveport upon the ground that they are unreasonable in themselves, but the burden of the complaint is that the rates are discriminatory against Shreveport and the discrimination is alleged to arise because of the fact that the defendants apply lower rates between points in Texas than are applied from Shreveport to Texas points for equal distances. No substantial evidence was offered on the hearing to support the contention that the rates complained of, either class or commodity, were unjust and unreasonable in and of themselves, and, as appears from its report, the Interstate Commerce Commission does not find that the several commodity rates complained of were unjust or unreasonable. The Commission's finding is that the rates from Shreveport are unjustly discriminatory under Section 3 of the Act to Regulate Commerce because of lower rates for equal distances in Texas, and the order requires the adoption of the Texas rates, not because the Texas rates are reasonable or just or because the Shreveport rates are unreasonable or unjust, but because of the alleged discrimination. While the Commission has power, under some circumstances, to condemn rates that are discriminatory,

its authority in establishing other rates in their stead, petitioner avers, is limited to the establishment of rates that are, under the facts of the case, just and reasonable in and of themselves. Since the Commission did not, in this instance, pass upon the reasonableness of the commodity rates complained of in cause No. 3918 or find that the rates applied by the defendants between points in Texas were just or reasonable in and of themselves, its action in making the said order was purely arbitrary, and, being arbitrary, its effect is to deprive petitioner and the other carriers interested of their property without due process of law, contrary to the fifth amendment to the Constitution of the United States.

VII.

The commodity rates adopted by the Interstate Commerce Commission in the said order as a basis for the rates from Shreveport to the Texas points therein named are rates prescribed by the Railroad Commission of Texas, which is the rate-making body in Texas. The law creating the Railroad Commission and defining its powers and duties and fixing the penalties for a failure to comply with its orders and regulations is sufficiently set forth in paragraph VI, pages 15 to 18, of the petition of the original petitioners, and Exhibit "B" thereto, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length herein.

The rates so adopted for observance by The Texas & Pacific Railway Company are the rates made under circular No. 1178 of the Railroad Commission of Texas, effective September 7, 1900, as amended by circular No. 1531, effective February 10, 1902, the nature of which is sufficiently explained in paragraph VII, 116 pages 18 to 20, of the said petition, and said circular No. 1178 as so amended is set out at length in Exhibit "C" to said petition, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length in this connection.

The general mileage scale of rates adopted by the Railroad Commission of Texas, petitioner avers, is too low, and said rates, considering the volume of traffic handled, the short distances at which the maximum rates are reached and the large scope of territory over which the maximum rates apply, are unjust and unreasonable, but the basis of rates prescribed by said circular No. 1178 of said Railroad Commission (the rates thereunder being twenty per cent less than the standard mileage rates enforced in Texas) are even more unjust and unreasonable. All of said rates were established over the protest of petitioner and the other carriers interested, and they are unwillingly applied by them, but the Railroad Commission being the rate-making body in Texas, they have no authority to change the rates and must, subject to severe penalties, apply them until they are set aside.

That part of petitioner's line extending from McKinney, Texas, eastward to Shreveport, Louisiana, was acquired by it in 1901, under an Act of the Legislature approved May 16, 1899 (page 206, General Laws of Texas, 1899), Section 7 of which provides that "the acceptance of the provisions of this act is an agreement on the part of The Missouri, Kansas & Texas Railway Company of Texas to abide by and submit to the rates, rules, regulations and requirements of the Railroad Commission of the State of Texas until the same are set aside by a court of competent jurisdiction on final hearing." By reason of this provision and many other considerations—among them, the difficulty of attacking a single rate established by 117 the Commission, the difficulty of securing the consent of all the lines interested to attack the whole body of the Commission's rates and the futility of an effort to do this by a single line, the desire to avoid litigation and the confusion, strife and unrest in-

cident to a suit to set aside the whole body of the Commission's rates, and the hope that at some time in the near future the volume of business handled by petitioner would so increase as to make the Commission's rates yield it a fair return upon its investment, which hope, however, has not been realized—petitioner has submitted to the said unjust and unreasonable rates so prescribed and enforced by the Railroad Commission of Texas. Said rates, however, do not, as the record in this case shows, afford it a fair return upon its investment, notwithstanding the fact that its property is economically managed and it secures all the revenue from the operation thereof that it is able to secure under such rates and the rates prescribed in the tariffs on file with the Interstate Commerce Commission issued by it or to which it is a party. Its total revenues from the operation of its road for the year ending June 30, 1911, were \$10,726,756.56, of which \$6,408,939.42 was received from the handling of freight and \$4,317,817.14 from passengers (including mail, baggage, express and other items). Its total operating expenses for said period were \$8,438,539.60, which left a net operating revenue of \$2,228,216.96. For said year its property was valued for taxation purposes by the State Tax Board of the State of Texas at \$41,775,355.00, which sum, petitioner avers, is not above the fair and reasonable value thereof. It thus received on its investment for said year,

118 using such property value, a return of less than 5.33 per cent, whereas a reasonable return would have been at least 7 per cent upon such value. Taking the basis adopted in the Minnesota rate case for dividing its property and expenses between State traffic and interstate traffic, the return on its investment devoted to State business for said years was 3.45 per cent. Out of the net operating revenue there had to be paid taxes, hire of equipment, rents of various kinds and interest on bonded indebtedness, all of which amounted to \$2,676,153.40, leaving a deficit of \$387,936.44 as the result of the year's operation. Petitioner further avers that it has no reasonable prospect of receiving a better return upon its investment for the current year.

The rates so prescribed by the Railroad Commission of Texas, therefore, being unjust and unreasonable, and they being unwillingly applied by petitioner and the other carriers affected thereby, the Interstate Commerce Commission had no power or authority to make them the basis of interstate rates from Shreveport to points in Texas, for, as previously stated, its authority is limited to the establishment of just and reasonable rates.

VIII.

The said order of the Interstate Commerce Commission requires that the railway companies therein named cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from the Texas points named towards Shreveport for an equal distance. The State of Texas has a classification prescribed by the Railroad Commission of Texas, in which many articles are differently classed from the classification provided in the Western

Classification and under the Texas classification the carload maxima are frequently less than under the Western Classification, and the mixtures are different under the two classifications. By reason of these facts the movement of freight under the Texas classification is more onerous upon the carriers than is the movement of freight under the Western Classification, and the revenues received from traffic handled under the Texas classification are less than the revenues from similar traffic handled under the Western Classification. The Interstate Commerce Commission adopts the Western Classification as to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, and the Railroad Commission of Louisiana adopts said Western Classification for freight moving between points in that State, but under the order of said Commission herein complained of petitioner and the other carriers affected thereby will be compelled to adopt the Texas classification as to traffic moving from Shreveport to the defined Texas points, thereby causing a discrimination against the carriers subject to or affected by the order and against the shippers residing on other lines and at points other than Shreveport.

IX.

There is considerable traffic over petitioner's line from Shreveport to points directly affected by said order of the Interstate Commerce Commission. For the calendar year 1911 it handled of such traffic approximately 3,431,742 pounds, from which it received revenues amounting to about \$19,344.79. Had it handled the same business on the rates prescribed in said order its revenues would have been \$3,576.05 less, or \$5,768.74. By reason of the facts mentioned in subdivision 2 of paragraph V herein a reduction in the rates from Shreveport to the points mentioned in the order will of necessity effect a reduction in rates on practically all classes and commodities to the points in said order named, in the entire State of Texas, and to points in other States in the Southwest and in the Republic of Mexico, not only on business moving through Shreveport but on business through Kansas City, St. Louis and the other gateways and territories in said paragraph mentioned, the loss in revenue from which to the Missouri, Kansas & Texas Railway System would be not less than \$400,000.00 per annum. All of which will be shown in detail upon the hearing hereof.

The rates on a large amount of traffic in the territory along and adjacent to the Mississippi River, petitioner avers upon information and belief, are very low, because the rates on such traffic are affected by water competition. The City of Shreveport is situated on the Red River, which is a tributary of the Mississippi, and Shreveport is connected with Mississippi River gateways by several lines of railroad. By virtue of its location it is carried lower rates on inbound freight than are accorded to distributing points in Texas named in said course No. 3118. When these low inbound rates are added to the outbound rates from Shreveport it will be found, as petitioner is informed and believes, and upon such information and belief alleges the fact to be, that the total transportation charge on the commodities

ties and classes mentioned and described in said order under existing rates to the territory mentioned and described therein is not materially higher than the total transportation charge on the same classes and commodities huddled into the same territory from distributing points in Texas directly affected by said order. In many instances the total transportation charges through Shreve-
 121 port are less. The territory that Shreveport can now reach on such combination is substantially as large as that which can be reached from Dallas. If the said order of the Interstate Commerce Commission is enforced, on the great volume of freight traffic referred to therein the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and, petitioner is informed and believes, and on such information and belief alleges the fact to be, will be much lower than the total transportation charge on freight traffic which moves into and out of the Texas distributing points to the said territory, and thereby a large amount of traffic now handled by petitioner from Texas distributing points to said territory will be transferred to the business men of Shreveport and in consequence thereof this will entail upon petitioner large and substantial losses in freight and revenue, and will seriously affect such Texas distributing points.

The Railroad Commission of Texas has continuously exercised the powers conferred by the act under which it was created and the amendments thereof and supplements thereto, in the fixing of rates within the State of Texas for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that State from points beyond the State were reduced to such extent as, in the judgment of the Commission, to affect injuriously the interests of manufacturers, wholesalers, jobbers and others within the State. If the reductions made by said order in cause No. 3918 should be enforced the Railroad Commission of Texas, petitioner avers on in-
 122 formation and belief, will further reduce the rates in Texas, which are now too low, in order to meet the competition created by the order herein complained of. Such action on its part will place petitioner and the other carriers interested between the upper and the nether millstones, and by reason of the orders of the Interstate Commerce Commission reducing interstate rates to prevent competition, followed by orders of the Railroad Commission making reductions to prevent competition, and the inability of petitioner and the other Texas carriers to increase the Texas State rates, they will be wholly without remedy.

X.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the order of the Interstate Commerce Commission in said cause No. 3918, fixing commodity rates for shipments from Shreveport, Louisiana, to the points in Texas therein named, was made

without power or authority, either directly or indirectly, conferred upon it by the Act to Regulate Commerce or any amendment thereof or supplement thereto, or by any other law of the United States, the Commission having no jurisdiction over the rates in Texas and the discrimination prohibited by Section 3 of the Act to Regulate Commerce and which the Commission is given power to prevent by Section 15 of said Act, being a discrimination in interstate rates, and the power of the Commission in the substitution of rates for rates condemned being limited to the establishment of rates that are just and reasonable in and of themselves. The said order, therefore, petitioner avers upon information and belief, is void and is in violation of subdivision 3 of Section 8 of Article 1 of the Constitution of the United States and the tenth amendment to the Constitution of the United States and the Act to Regulate Commerce, especially Section 1 thereof, and the amendments thereto.

123 2. That if the Interstate Commerce Commission has power in any case to remove a discrimination caused by the application of different rates for the handling of State traffic and interstate traffic, such power does not exist where the State rates are made, not by the carriers, but by a governmental agency, and the carriers have no authority to change or modify them, and where, as in this case, the State rates are unduly low and are unjust and unreasonable.

3. That said order of the Interstate Commerce Commission is, for the reasons hereinbefore set forth, unjust, unreasonable and discriminatory, and therefore void.

4. That said order in so far as it undertakes to fix and establish commodity rates is invalid and void for the reason that there was no evidence before the Commission that the commodity rates complained of were unjust or unreasonable and the Commission wholly fails to find that they were unjust or unreasonable, and there was no evidence that the rates established in lieu thereof were just or reasonable and the Commission wholly fails to find that said rates were just or reasonable. The order, therefore, deprives petitioner and the other carriers affected thereby of their property without due process of law and takes private property for public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

XI.

Wherefore, petitioner prays that due service of this petition be made on respondent herein commanding it to answer the
 124 matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said order of the Interstate Commerce Commission dated March 11, 1912, be in all things enjoined and set aside and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof,

and that the said rates so established by the Commission be declared to be unjust and unreasonable. Petitioner also prays for such general and special relief as the equities of the case may warrant.

ALEX. S. COKE,

A. H. McKNIGHT,

*Solicitors for Petitioner, The Missouri, Kansas
& Texas Railway Company of Texas.*

JOSEPH M. BRYSON,

Of Counsel.

THE STATE OF TEXAS,

County of Dallas:

I, J. L. West, being duly sworn, state upon oath that I am the General Freight Agent of The Missouri, Kansas & Texas Railway Company of Texas, petitioner in the above entitled and numbered cause, and, as such, am authorized to make this affidavit; and that

I have read the foregoing petition, and the allegations of fact
125 set forth therein are true, and the allegations made upon information and belief I believe to be true.

J. L. WEST.

Sworn to and subscribed by the said J. L. West before me, the undersigned authority, this the 21st day of May, A. D. 1912.

[Seal Notary Public, County of Dallas, Texas.]

D. A. ELDRIDGE,

Notary Public, Dallas County, Texas.

My commission expires June 1st, 1913.

126 In the United States Commerce Court.

No. 67. In Equity.

HOUSTON, EAST & WEST TEXAS RAILWAY CO. and HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition of Intervention of the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas.

Filed June 4, 1912.

To the Honorable the Judges of the United States Commerce Court:

The St. Louis Southwestern Railway Company, a corporation duly organized under the laws of the State of Missouri, and authorized to do business under the law of the States of Arkansas and Louisiana, with its principal office in the City of St. Louis, State of

Missouri; and the St. Louis Southwestern Railway Company of Texas, a corporation duly organized under the laws of the State of Texas, with its principal office in the City of Tyler, Smith County, Texas (hereinafter called petitioners), by leave of the court
 127 join and file this, their petition of intervention in the above entitled and numbered cause, and thereupon complain, and say:

I.

Petitioners are carriers by railroad, engaged in the carriage of freight and passengers between points in the State of Texas and points in the State of Louisiana and various other States and Territories of the United States and foreign countries; and petitioner, St. Louis Southwestern Railway Company of Texas, is engaged in the carriage of freight and passengers between points in the State of Texas, and petitioner, St. Louis Southwestern Railway Company, is engaged in the transportation of freight and passengers between points in the State of Louisiana and between points in the State of Arkansas, and between points in the State of Missouri; and your petitioners have been such carriers engaged in the handling of such commerce during the time of all the happenings hereinafter referred to, and were for many years prior thereto. The tariffs (rates, charges, classifications, regulations and practices observed and enforced by each of them in the conduct of the aforesaid business have been legally established, filed and observed, and the said rates, charges, classifications, regulations and practices were, as petitioners are informed and charges, just, fair and reasonable as to all parties, places, communities and States interested therein.

II.

Heretofore, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against petitioners and other carriers engaged in commerce between points in Louisiana and points
 128 in the State of Texas, said cause being number 3918 on the docket of said Interstate Commerce Commission. Said petition was filed on behalf of various merchants, manufacturers, jobbers and other shippers residing in the City of Shreveport. Complaint was made that the defendants had in effect rates between points in Texas on various classes and commodities which were lower than the rates in effect between Shreveport and Texas points for equal distances, and that the Texas points were in competition with Shreveport. It was further alleged: "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates, would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas.

As a result of said unlawful rates, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said Eastern Texas."

The petition prayed for an order requiring defendants to cease and desist from the alleged discrimination against Shreveport interests and prescribing just and reasonable rates between Shreveport and the various Texas points in the petition named on all the classes and commodities therein referred to.

Answers were filed to said petition by various defendants, among others by petitioners, which answers, among other things, denied that the Shreveport business interests on whose behalf the
129 said complaint was filed were unable to do business in Texas, as alleged in the petition, because of any rate or rate adjustment applied or enforced by the defendants, and that the rates and regulations complained of were unjust, unreasonable or unduly discriminatory. On the contrary, the said rates and regulations of the defendants, it was averred, were just, reasonable and non-discriminatory. It was further averred that the rates applicable between points in Texas were prescribed by the Railroad Commission of Texas and the same were improper and unduly low and were applied by the carriers under protest.

By permission of the Interstate Commerce Commission numerous pleas of intervention were filed by shippers and commercial bodies in the State of Louisiana, such shippers and commercial bodies joining in the prayer of complainants.

III.

Testimony was taken and arguments were made in the case, and the same was submitted to the Interstate Commerce Commission, January 26, 1912. Thereafter, on March 11, 1912, the Commission handed down its report and order in said cause, four members of the Commission holding with complainants as hereinafter stated and three members dissenting from such holding.

IV.

The opinion of the majority of the Interstate Commerce Commission, after briefly stating the case, sets forth what is referred to as the policy of the Railroad Commission of Texas and, after quoting a number of utterances of the Texas Commission, it, among other things, states:

"There appears to be little question as to the policy of the Texas
130 Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the North and the East into Texas were pursuing a policy hostile to the development of that State. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other States and thus restrict the growth

of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind, the Texas Commission sought to establish a Texas policy and to make the railroads within that State contribute in the manner believed by her own people to best subserve their own interests."

Further discussion of the policy of the Texas Commission is had and the opinion then states:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The conclusion is then announced that the Interstate Commerce Commission has no authority to require an interstate carrier to put into effect from an interstate point a schedule of State-made rates as such, that its authority is limited to condemning unreasonable rates and fixing in their stead maximum rates that are just and reasonable,

after which the following questions are propounded:

131 "Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a State by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining State?"

The answer is given that the Interstate Commerce Commission has power to prevent discrimination caused by the application of lower State rates than interstate rates where shippers under the two classes of rates come in competition with each other.

The following conclusions are then announced:

"We find:

"(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

"(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

"On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance,	Class rates in cents per 100 lbs.									
	miles.	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10

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Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.5	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	91.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

"On the Houston, East & West Texas Railway.

	Distance,	Class rates in cents per 100 lbs.									
From Shreveport, La., to—	miles.	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16

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Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

"(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

"(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

"(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under Western Classification.

"(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

"(7) That the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any
134 commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

"It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

"As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

Two concurring opinions were filed and three dissenting opinions. The dissenting opinions announce the proposition that the Interstate Commerce Commission has no authority to control State rates or to adopt State rates as measures of interstate rates unless the interstate rates complained of are unreasonable and the State rates are reasonable, and, therefore, the order of the Commission was without lawful authority, null and void.

In accordance with the opinion of the majority, an order was entered making effective the conclusions so announced, the same to become operative on or before May 1, 1912, and to remain in
135 force for a period of not less than two years thereafter. The effective date of said order was later, on April 19, 1912, extended to June 1, 1912, and later to July 1, 1912.

A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is attached to the petition of Hous-

ton, East & West Texas Railway Company and Houston & Shreveport Railroad Company, hereinafter called original petitioners, and reference is here made thereto and the Court is asked to consider the same as if fully set out herein.

V.

While the order of the Interstate Commerce Commission is by its terms directed only against the original petitioners and The Texas & Pacific Railway Company, petitioner is interested in the controversy or question before the Interstate Commerce Commission and is affected by said order in this:

1. Your petitioner, St. Louis Southwestern Railway Company, owns and operates lines of railway from St. Louis, Missouri, to Little Rock and Texarkana, Arkansas, Shreveport, Louisiana, Memphis, Tennessee, and intermediate points, as well as other points on lines in the States of Missouri, Illinois and Arkansas;

Your petitioner, St. Louis Southwestern Railway Company of Texas, owns and operates lines of railway from Texarkana, Texas, to Sherman, Fort Worth, Dallas, Hillsboro, Gatesville and Lufkin, Texas, including all intermediate points. That both of said companies have so operated said lines of railway for more than ten years; that the lines of railway of said two companies connect at the State line between Texas and Arkansas at Texarkana, which is a

border city; that the through trains operated over said lines
136 of railway from points on the lines of the St. Louis Southwestern Railway Company to points on the lines of the St. Louis Southwestern Railway Company of Texas, and through trains on the lines of the St. Louis Southwestern Railway Company of Texas to points on the St. Louis Southwestern Railway Company are operated by your petitioners in conjunction and are transferred from one to the other at the State line at the City of Texarkana, aforesaid. The lines of railway owned by your petitioners are commonly known and designated as the "Cotton Belt System." Your petitioners are each engaged in interstate and foreign commerce in the States above mentioned, and each is engaged in intrastate commerce in the State where its lines are situated, and have been so engaged for many years; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioners in the conduct of interstate and foreign commerce during the time they have been conducting such business has been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioners are informed and believe and charge the fact to be, just, fair and reasonable as to all parties, places, commodities, states and communities interested therein.

2. The lines of the Cotton Belt System, as it is called, extend from St. Louis, Missouri, and Memphis, Tennessee, to Sherman, Hillsboro, Gatesville and Lufkin and intermediate points in Texas, and Shreveport, Louisiana, and intermediate points, and a large part of the revenues of the lines which compose said Cotton Belt System are derived from the handling of business interchanged between your petitioners at Texarkana, Texas, which originate at St. Louis and

137 Memphis, or moving on rates based on such points, and much other revenue accruing to the system is derived from business in connection with other railway companies through Chicago, Little Rock, Memphis, Vicksburg, New Orleans, Galveston and other gateways. For many years rates from all defined territories into Southwestern territory, which includes the territory affected by the order in cause No. 3918, have been based on St. Louis, such rates being made by adding or deducting certain differentials to or from the St. Louis rates. The rates from Shreveport have, during all this time, been a differential under the St. Louis rate. The relation of rates from Shreveport to Texas points (not only those mentioned in the aforesaid order but practically all other points in the State) is such that because of the provisions of the Act to Regulate Commerce, and especially the fourth section thereof, and because of the natural and competitive conditions as to water rates, rail rates and commercial competition, any material reduction in the rates from Shreveport to the Texas points described in said order of the Interstate Commerce Commission will necessarily reduce rates on business moving through the gateways mentioned (a) to the territory so described; (b) to practically all other points in the State of Texas, and (c) to various points in other States in the Southwest and in the Republic of Mexico, all of which reductions in rates will result in a decrease in the revenues of petitioner and of the system of which it forms a part. If the Shreveport rates are not met a large part of the business now handled by said Cotton Belt System will move through Shreveport and over other lines on account of the readjustment of commercial conditions to meet the changed rate situation.

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VI.

In the aforesaid petition filed before the Interstate Commerce Commission complaint is made of both the class and commodity rates from Shreveport upon the ground that they are unreasonable in themselves, but the burden of the complaint is that the rates are discriminatory against Shreveport and the discrimination is alleged to arise because of the fact that the defendants apply lower rates between points in Texas than are applied from Shreveport to Texas points for equal distances. No substantial evidence was offered on the hearing to support the contention that the rates complained of, either class or commodity, were unjust and unreasonable in and of themselves, and, as appears from its report, the Interstate Commerce Commission does not find that the several commodity rates complained of were unjust or unreasonable. The Commission's finding is that the rates from Shreveport are unjustly discriminatory under Section 3 of the Act to Regulate Commerce because of lower rates for equal distances in Texas, and the order requires the adoption of the Texas rates, not because the Texas rates are reasonable or just or because the Shreveport rates are unreasonable or unjust, but because of the alleged discrimination. While the Commission has power, under some circumstances, to condemn rates that are discriminatory, its authority in establishing other rates in their stead, petitioner avers, is limited to the establishment of rates that are,

under the facts of the case, just and reasonable in and of themselves. Since the Commission did not, in this instance, pass upon the reasonableness of the commodity rates complained of in cause No. 3918 or find that the rates applied by the defendants between points in

139 Texas were just or reasonable in and of themselves, its action in making the said order was purely arbitrary, and, being arbitrary, its effect is to deprive petitioner and the other carriers interested of their property without due process of law, contrary to the fifth amendment to the Constitution of the United States.

VII.

The commodity rates adopted by the Interstate Commerce Commission in the said order as a basis for the rates from Shreveport to the Texas points therein named are rates prescribed by the Railroad Commission of Texas, which is the rate-making body in Texas. The law creating the Railroad Commission and defining its powers and duties and fixing the penalties for a failure to comply with its orders and regulations is sufficiently set forth in paragraph VI, pages 15 to 18, of the petition of the original petitioners, and Exhibit "B" thereto, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length herein.

The rates so adopted for observance by The Texas & Pacific Railway Company are the rates made under circular No. 1178 of the Railroad Commission of Texas, effective September 7, 1900, as amended by circular No. 1531, effective February 10, 1902, the nature of which is sufficiently explained in paragraph VII, pages 18 to 20, of the said petition, and said circular No. 1178 as so amended is set out at length in Exhibit "C" to said petition, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length in this connection.

The general mileage scale of rates adopted by the Railroad Commission of Texas, petitioner avers, is too low, and said rates, considering the volume of traffic handled, the short distances at 140 which the maximum rates are reached and the large scope of territory over which the maximum rates apply, are unjust and unreasonable, but the basis of rates prescribed by said circular No. 1178 of said Railroad Commission (the rates thereunder being twenty per cent less than the standard mileage rates enforced in Texas) are even more unjust and unreasonable. All of said rates were established over the protest of petitioner and the other carriers interested, and they are unwillingly applied by them, but the Railroad Commission being the rate-making body in Texas, they have no authority to change the rates and must, subject to severe penalties, apply them until they are set aside.

That part of petitioner, St. Louis Southwestern Railway Company of Texas' line extending from Tyler to Lufkin, Texas, was acquired by it in 1901, under an Act of the Twenty-sixth Legislature of the State of Texas (page 187, General Laws of Texas, 1899), Section 7 of which provides that "by accepting the provisions of this Act, the St. Louis Southwestern Railway Company of Texas agrees to abide

by the rates, rules and regulations of the Railroad Commission of the State of Texas until the same are set aside by a court of competent jurisdiction on final hearing." By reason of this provision and many other considerations—among them the difficulty of attacking a single rate established by the Commission, the difficulty of securing the consent of all the lines interested to attack the whole body of the Commission's rates and the futility of an effort to do this by a single line, the desire to avoid litigation and the confusion, strife and unrest incident to a suit to set aside the whole body of the Commission's rates, and the hope that at some time in the near future the volume of business handled by petitioner, St. Louis Southwestern

141 Railway Company of Texas, would so increase as to make the Commissioner's rates yield it a fair return upon its investment, which hope, however, has not been realized—it has submitted to the said unjust and unreasonable rates so prescribed and enforced by the Railroad Commission of Texas. Said rates, however, do not, as the record in this case shows, afford it a fair return upon its investment, notwithstanding the fact that its property is economically managed and it secures all the revenue from the operation thereof that it is able to secure under such rates and the rates prescribed in the tariffs on file with the Interstate Commerce Commission issued by it or to which it is a party. Its total revenues from the operation of its road for the year ending June 30, 1911, were \$4,212,379.92. Its total operating expenses for said period were \$4,046,967.56, which left a net operating revenue of \$165,412.36. For said year its property was valued for taxation purposes by the State Tax Board of the State of Texas at \$13,248,000.00, which sum, it avers, is not equal to the fair and reasonable value thereof. Upon information and belief, petitioner, St. Louis Southwestern Railway Company of Texas, avers that its line is reasonably worth about \$30,000.00 per mile, and that it owns 703.3 miles of lines, and a reasonable return thereon would be 7 per cent on the fair and reasonable value of its property. Out of the net operating revenue there had to be paid taxes, hire of equipment, rents of various kinds and interest on bonded indebtedness, all of which amounted to \$500,494.31, leaving a deficit of \$306,876.51 as the result of the year's operation. It further avers that it has no reasonable prospect of receiving a better return upon its investment for the current year.

The rates so prescribed by the Railroad Commission of
142 Texas, therefore, being unjust and unreasonable, and they being unwillingly applied by it and the other carriers affected thereby, the Interstate Commerce Commission had no power or authority to make them the basis of interstate rates from Shreveport to points in Texas, for, as previously stated, its authority is limited to the establishment of just and reasonable rates.

Your petitioner, St. Louis Southwestern Railway Company, owns 621.98 miles of railway, which it operates, and which on information and belief it avers is worth the reasonable value of \$35,000.00 per mile. It has other operated mileage which it does not own, and the operating contracts thereon are of large value. It owns other property and has other assets of large value, the details of all of which

will be shown on the hearing hereof. It needs additional terminal facilities at various points, as well as additions and betterments, including rolling stock and other necessary improvements which cannot be made out of its earnings and leave a reasonable return on the reasonable value of all of its property.

That the St. Louis Southwestern Railway Company of Texas needs improvements in its grade, such as reducing grades, eliminating curves; it also needs to acquire additional terminals at various points, as well as increase in its rolling stock and other improvements, none of which can be done out of its earnings and leave any return on the value of its property.

That these conditions on both of said lines have obtained for many years, notwithstanding they have been economically and properly administered and operated.

VIII.

The said order of the Interstate Commerce Commission requires that the railway companies therein named cease and desist from charging higher rates upon any commodity from Shreveport into

143 Texas than are contemporaneously charged for the carriage of such commodity from the Texas points named towards Shreveport for an equal distance.

The State of Texas has a classification prescribed by the Railroad Commission of Texas, in which many articles are differently classed from the classification provided in the Western Classification and under the Texas classification the carload maxima are frequently less than under the Western Classification, and the mixtures are different under the two classifications. By reason of these facts the movement of freight under the Texas classification is more onerous upon the carriers than is the movement of freight under the Western Classification, and the revenues received from traffic handled under the Texas classification are less than the revenues from similar traffic handled under the Western Classification. The Interstate Commerce Commission adopts the Western Classification as to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, and the Railroad Commission of Louisiana adopts said Western Classification for freight moving between points in that State, but under the order of said Commission herein complained of petitioners and the other carriers affected thereby will be compelled to adopt the Texas classification as to traffic moving from Shreveport to the defined Texas points, thereby causing a discrimination against the carriers subject to or affected by the order and against the shippers residing on other lines and at points other than Shreveport.

IX.

By reason of your petitioners having a long haul, there is a very light traffic over their lines from Shreveport to points directly affected by said order of the Interstate Commerce Commission. For

the calendar year ending December 31, 1911, your petitioners
144 estimate that if they had handled the traffic which — did
under the proposed reduction of rates maintained in said
order, that they each would have suffered a loss of about \$407.46.

By reason of the facts pleaded and set out herein a reduction in
the rates from Shreveport to the points mentioned in the order will
of necessity effect a reduction in rates on practically all classes and
commodities to the points in said order named, to the entire State of
Texas, and to points in many other States in the Southwest and in
the Republic of Mexico, not only on business moving through
Shreveport, but on business through Memphis, St. Louis and the
other gateways and territories herein mentioned, the loss in revenue
from which to your petitioners would be not less than \$100,000.00
each per annum. All of which will be shown in detail upon the
hearing hereof.

The rates on a large amount of traffic in the territory along and
adjacent to the Mississippi River, petitioner avers upon information
and belief, are very low, because the rates on such traffic are affected
by water competition. The City of Shreveport is situated on the Red
River, which is a tributary of the Mississippi, and Shreveport is con-
nected with Mississippi River gateways by several lines of railroad.
By virtue of its location it is accorded lower rates on inbound freight
than are accorded to distributing points in Texas named in said cause
No. 3918. When these low inbound rates are added to the outbound
rates from Shreveport it will be found, as petitioner is informed and
believes, and upon such information and belief alleges the fact to be,
that the total transportation charge on the commodities and classes
mentioned and described in said order under existing rates to the
territory mentioned and described therein is not materially

145 higher than the total transportation charge on the same
classes and commodities handled into the same territory from
distributing points in Texas directly affected by said order. In
many instances the total transportation charges through Shreveport
are less. The territory that Shreveport can now reach on such com-
bination is substantially as large as that which can be reached from
Dallas. If the said order of the Interstate Commerce Commission is
enforced, on the great volume of freight traffic referred to therein
the total transportation charge into and out of Shreveport to the ter-
ritory directly affected by said order will be largely reduced and,
petitioner is informed and believes, and on such information and
belief alleges the fact to be, will be much lower than the total trans-
portation charge on freight traffic which moves into and out of the
Texas distributing points to the said territory, and thereby a large
amount of traffic now handled by petitioner, St. Louis Southwestern
Railway Company of Texas, from Texas distributing points to said
territory will be transferred to the business men of Shreveport and
in consequence thereof this will entail upon petitioner large and sub-
stantial losses in freight and revenue, and will seriously affect such
Texas distributing points.

The Railroad Commission of Texas has continuously exercised
the powers conferred by the act under which it was created and the

amendments thereof and supplements thereto, in the fixing of rates within the State of Texas for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that State from points beyond the State were reduced to such extent as, in the judgment of the Commission, to affect injuriously the interests of manufacturers, wholesalers, jobbers and others within the State. If the reductions made by said order in cause No. 3918 should be enforced the Railroad Commission of Texas, petitioner avers on information and belief, will further reduce the rates in Texas, which are now too low, in order to meet the competition created by the order herein complained of. Such action on its part will place petitioner, St. Louis Southwestern Railway Company of Texas, and the other carriers interested between the upper and the nether millstones, and by reason of the orders of the Interstate Commerce Commission reducing interstate rates to prevent competition, followed by orders of the Railroad Commission making reductions to prevent competition, and the inability of petitioner, St. Louis Southwestern Railway Company of Texas, and the other Texas carriers to increase the Texas State rates, they will be wholly without remedy.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the order of the Interstate Commerce Commission in said cause No. 3918, fixing commodity rates for shipments from Shreveport, Louisiana, to the points in Texas therein named, was made without power or authority, either directly or indirectly, conferred upon it by the Act to Regulate Commerce or any amendment thereof or supplement thereto, or by any other law of the United States, the Commission having no jurisdiction over the rates in Texas and the discrimination prohibited by Section 3 of the Act to Regulate Commerce and which the Commission is given power to prevent by Section 15 of said Act, being a discrimination in interstate rates, and the power of the Commission in the substitution of rates for rates condemned being limited to the establishment of rates that are just and reasonable in and of themselves. The said order, therefore, petitioner avers upon information and belief, is void and is in violation of subdivision 3 of Section 8 of Article 1 of the Constitution of the United States and the tenth amendment to the Constitution of the United States and the Act to Regulate Commerce, especially Section 1 thereof, and the amendments thereto.

2. That if the Interstate Commerce Commission has power in any case to remove a discrimination caused by the application of different rates for the handling of State traffic and interstate traffic, such power does not exist where the State rates are made, not by the carriers, but by a governmental agency, and the carriers have no authority to change or modify them, and where, as in this case, the State rates are unduly low and are unjust and unreasonable.

3. That said order of the Interstate Commerce Commission is, for

the reasons hereinbefore set forth, unjust, unreasonable and discriminatory, and therefore void.

4. That said order in so far as it undertakes to fix and establish commodity rates is invalid and void for the reason that there was no evidence before the Commission that the commodity rates complained of were unjust or unreasonable and the Commission wholly fails to find that they were unjust or unreasonable, and there was no evidence that the rates established in lieu thereof were just or reasonable and the Commission wholly fails to find that said rates were just or reasonable. The order, therefore, deprives petitioners and the other carriers affected thereby of their property without due
148 process of law and takes private property for public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

XI.

Wherefore, petitioners pray that due service of this petition be made on respondent herein commanding it to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said order of the Interstate Commerce Commission dated March 11, 1912, be in all things enjoined and set aside and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof, and that the said rates so established by the Commission be declared to be unjust and unreasonable. Petitioners also pray for such general and special relief as the equities of the case may warrant.

E. B. PERKINS,

S. H. WEST,

ROY F. BRITTON,

DANIEL UPTHEGROVE,

Solicitors for Petitioners, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

Of Counsel.

149 THE STATE OF TEXAS,
County of Dallas:

I, W. F. Murray, being duly sworn, state upon oath that I am the Assistant General Freight Agent of the St. Louis Southwestern Railway Company of Texas, one of the petitioners in the above entitled and numbered cause, and, as such, am authorized to make this affidavit; and that I have read the foregoing petition, and the allega-

tions of fact set forth therein are true, and the allegations made upon information and belief I believe to be true.

W. F. MURRAY.

Sworn to and subscribed by the said W. F. Murray before me, the undersigned authority, this the 25 day of May, A. D. 1912.

[Seal Notary Public, County of Dallas, Texas.]

ISABELLE ABRIGHT,
Notary Public, Dallas County, Texas.

My commission expires June 1913.

150 In the United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RY. CO. and HOUSTON & SHREVE-
PORT R. R. Co., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

Order of Intervention.

Entered June 4, 1912.

The St. Louis Southwestern Railway Co., St. Louis Southwestern Railway Co. of Texas, Missouri, Kansas and Texas Ry. Co. of Texas having filed and presented their petitions for intervention herein and it appearing to the Court from the said petitions that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the St. Louis Southwestern Railway, St. Louis Southwestern Railway Co. of Texas, Missouri, Kansas & Texas Ry. Co. of Texas be and they are hereby allowed to intervene and become parties intervenor and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

151 *Answer of the United States to Petition of Intervention of Missouri, Kansas & Texas Railway Company of Texas.*

Filed May 29, 1912.

No. 67.

In the United States Commerce Court.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

v.

UNITED STATES and INTERSTATE COMMERCE COMMISSION,
Respondents.

Petition of Intervention of the Missouri, Kansas & Texas Railway Company of Texas.

Answer of the United States.

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition of intervention, and asks that its answer to the original petition of the Houston, East & West Texas Railway Company, and the Houston & Shreveport Railroad Company, be taken herein as its answer to the petition of intervention.

WINFRED T. DENISON,

Assistant Attorney General.

May 29, 1912.

152 In the United States Commerce Court.

In Equity. No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY and HOUSTON & Shreveport Railroad Company, Petitioners, and The Missouri, Kansas & Texas Railway Company of Texas, Intervening Petitioner,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission to Petition of Intervention of Missouri, Kansas & Texas Railway Company of Texas.

Filed June 3, 1912.

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and ad-

vantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

This respondent, which for convenience will be referred to hereinafter as the commission, admits that it made and entered the order dated March 11, 1912, and included in Exhibit A to the original petition herein, in a proceeding then pending before it, wherein J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, were complainants, and the petitioner herein and certain other carriers were defendants, and alleges that said order was duly served upon said defendants.

The commission further alleges that in the complaint in said proceeding it was alleged that the present class rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., and by the Texas & Pacific Railway Co., for the transportation of traffic from Shreveport, in the State of Louisiana, to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves.

The commission further alleges that in said complaint it was alleged that the rates maintained, exacted, and collected by the Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted, and collected by said Texas & Pacific Railway Co., in each instance, for the transportation of like traffic equal distances in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas.

The commission further alleges that in said complaint it was alleged that the rates maintained, exacted and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation of like traffic equal distances in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston.

The commission further alleges that in said complaint it was al-

leged that the rules and practices applied by the Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in connection with the concentration at Shreveport of interstate shipments of
155 cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas.

The commission further alleges that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered by the allegations contained in said complaint were submitted to the commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the commission for determination, whereupon, the commission determined said matters and made a report which included the commission's decision, conclusions, order and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon
156 the evidence aforesaid and as shown in and by said report and said order, the commission found that, the present class rates maintained, exacted and collected by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., for the transportation of traffic from Shreveport to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates maintained, exacted and collected by said Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said Texas & Pacific Railway Co., in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas; that the rates maintained, exacted and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway

from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said Houston, East & West Texas Railway Co. and
157 Houston & Shreveport Railroad Co., in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas, and further found that the reasonable class rates to be charged as maxima in the future by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. for two years from and after May 1, 1912, in lieu of the present class rates of said Texas & Pacific Railway Co., and of the Houston, East

158 Railroad Co. would be the rates named in said order, and the commission alleges that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition of intervention herein of The Missouri, Kansas & Texas Railway Co. of Texas.

The commission further alleges that the rates named as maxima in said order will furnish to said Texas & Pacific Railway Co. and to the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. full, reasonable, fair and just compensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition of intervention.

The commission further alleges that said order was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner, and

159 that said order is otherwise lawful and valid; and the commission denies each of and all the allegations to the contrary contained in said petition of intervention.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said petition of intervention, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain and prove as this honorable court shall direct, and thereby prays that said petition of intervention be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor*.

CITY OF WASHINGTON,
District of Columbia, 88:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 3rd day of May, 1912.

[NOTARIAL SEAL.]

GEORGE B. MCGINTY,
Notary Public.

160 In the United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

VS.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Motion on Behalf Railroad Commission of Louisiana for Permission to Intervene as Party Respondent and to be Represented by Counsel in the Above-entitled Suit.

(Filed June 4, 1912.)

Comes now the Railroad Commission of Louisiana and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as respondent, and to be represented by counsel in the above entitled suit, and as ground for such motion respectfully shows that it, through its constituent members, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, was com-

plainant in the complaint filed before the Interstate Commerce Commission on or about March 8, 1911, I. C. C. Docket, 3918, in which case said Interstate Commerce Commission made the order attacked in the above entitled cause, and that it is vitally interested in having the order of the said Interstate Commerce Commission sustained.

THE RAILROAD COMMISSION OF
LOUISIANA,

By R. G. PLEASANT,
W. M. BARROW,
LUTHER M. WALTER.

161 In the United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al.,
Petitioners,

v.

UNITED STATES OF AMERICA.

Order of Intervention.

Entered June 4, 1912.

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

Proceedings of June 27, 1912.

No. 67.

HOUSTON, EAST & WEST TEXAS RY. CO. et al., Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION et al., Interveners.

No. 68.

THE TEXAS & PACIFIC RAILWAY Co., Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION et al., Interveners.

Said causes came on for final hearing upon the merits and the arguments of counsel were concluded, Mr. H. M. Garwood, Mr. H. A. Scandrett and Mr. Henry G. Herbel appearing on behalf of the petitioners, Mr. Winfred T. Denison on behalf of the United States, Mr. P. J. Farrell on behalf of the Interstate Commerce Commission and Mr. Luther M. Walter on behalf of the Railroad Commission of Louisiana. By oral agreement of counsel in open court made, petitioners were given leave to correct the petition in No. 67 by inserting on page 27, line 3 of section XI, after the figures "\$25,000" the words "of which \$20,000 will result from the reduction in the commodity rates". Petitioners were also granted leave to correct the amended petition in case No. 68 by inserting on page 26 of said amended petition at the end of the first paragraph of section XI, after the figures "\$812,700" the words "most of which will result from the reduction of the commodity rates". Thereupon the causes were taken under advisement by the Court.

Entered June 28, 1912.

In the United States Commerce Court, June Session, 1912.

Nos. 67 and 68.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al. and
TEXAS AND PACIFIC RAILWAY COMPANY, Petitioners,
v.

UNITED STATES OF AMERICA et al., Respondents.

Order.

On motion of counsel for the intervening respondent, Railroad Commission of Louisiana, in open court made, the counsel for all of the parties being present and consenting thereto,

It is ordered, That the answers of the United States and the Interstate Commerce Commission to the original petition and the supplemental petition be and the same are hereby made to stand as the answers of the intervening respondent, the Railroad Commission of Louisiana.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

164

Opinion.

Filed April 25, 1913.

United States Commerce Court, June Session, 1912.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al.,
Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Railroad Commission of Louisiana, and St. Louis
Southwestern Railway Company et al., Interveners.

On Final Hearing.

(For opinion of Interstate Commerce Commission see 23 I. C. C.
Rep., 31.)

Mr. H. A. Scandrett and Mr. H. M. Garwood for the petitioners.

Mr. Winfred T. Denison, Assistant Attorney General, with whom
Mr. Thurlow M. Gordon, special assistant to the Attorney General,
was on the brief, for the United States.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Luther M. Walter, with whom Mr. R. G. Pleasant, at-
165 torney general of Louisiana, and Mr. W. M. Barrow, assist-
ant attorney general of Louisiana, were on the brief, for the
Railroad Commission of Louisiana.

Mr. E. B. Perkins, Mr. S. H. West, Mr. Roy F. Britton, Mr.
Daniel Upthegrove, Mr. Joseph M. Bryson, Mr. Alex. S. Coke, and
Mr. A. H. McKnight for the intervening carriers.

Before Knapp, Presiding Judge, and Hunt, Carland, and Mack,
Judges.

[April 25, 1913.]

KNAPP, *Presiding Judge:*

This case involves the same question as Texas & Pacific Ry. Co.
v. United States et al., just decided. For the reasons stated in the
opinion in that case the petition will be dismissed.

166 In the United States Commerce Court, June Session, 1912.

No. 67

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al.,
Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Railroad Commission of Louisiana, and St. Louis
Southwestern Railway Company et al., Interveners.

Final Decree.

(Entered April 29, 1913.)

This cause came on for final hearing at this session and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed that the petition be, and the same is hereby, dismissed at the cost of the petitioners.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

167 In the United States Commerce Court.

No. 67.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY and HOU-
STON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Intervening Respondent; J. J. Meredith, Shelby
Taylor, and Henry B. Schreiber, Constituting the Railroad Com-
mission of Louisiana; Missouri, Kansas & Texas Railway Com-
pany of Texas; St. Louis Southwestern Railway Company, and
St. Louis Southwestern Railway Company of Texas, Intervening
Petitioners.

Petition for Allowance of Appeal.

(Filed May 12, 1913.)

Come now Houston East and West Texas Railway Company, and Houston & Shreveport Railroad Company, petitioners in the above entitled and numbered cause, and St. Louis, Southwestern Railway Company, St. Louis, Southwestern Railway Company of Texas, and Missouri, Kansas & Texas Railway Company of Texas, intervening petitioners, and, feeling aggrieved by the order and final decree of the Court entered herein on the 29th day of April, 1913, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignments of error

filled herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the
 168 Supreme Court of the United States.

HOUSTON, EAST AND WEST TEXAS
 RAILWAY COMPANY,
 HOUSTON & SHREVEPORT RAILROAD
 COMPANY,

By JAS. G. WILSON,
 H. M. GARWOOD,
Attorneys.

MISSOURI, KANSAS & TEXAS RAIL-
 WAY COMPANY OF TEXAS,

By JOSEPH M. BRYSON,
 ALEX. S. COKE,
Attorneys.

ST. LOUIS SOUTHWESTERN RAILWAY
 COMPANY,
 ST. LOUIS SOUTHWESTERN RAILWAY
 COMPANY OF TEXAS,

By S. H. WEST,
 EDW. A. HAID,—
Attorneys.

169 In the United States Commerce Court.

No. 67.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY, HOUSTON &
 SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
 Commission, Intervening Respondent; J. J. Meredith, Shelby
 Taylor, Henry B. Schreiber, Constituting the Railroad Commis-
 sion of Louisiana; Missouri, Kansas & Texas Railway Company of
 Texas, St. Louis Southwestern Railway Company, and St. Louis
 Southwestern Railway Company of Texas, Intervening Peti-
 tioners.

Assignments of Error.

(Filed May 12, 1913.)

Come now petitioners and intervening petitioners in the above
 entitled cause and make the following assignments of error to the
 Order and Decree of the Court, to-wit:

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First.

The Court erred in dismissing the petition of Houston East and West Texas Railway Company and Houston & Shreveport Railroad Company, petitioners herein, and the petitions of Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, intervening petitioners herein, and rendering final decree herein, sustaining and holding valid the order of the Interstate Commerce Commission in Cause No. 3918, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, vs. St. Louis Southwestern Railway Company, et al., of date March 11, 1912, for that:

Said order of the Interstate Commerce Commission was and is wholly invalid and void in that the Interstate Commerce Commission having therein held that the interstate commodity rates from Shreveport, Louisiana, to the several Texas points in said order mentioned, were in all things reasonable, the said Interstate Commerce Commission is without power, authority or jurisdiction to order petitioners, Houston East and West Texas Railway Company, and Houston & Shreveport Railroad Company, to equalize rates imposed by the Railroad Commission of Texas between points wholly within the State of Texas so as to conform said intrastate rates so made by and under the authority of the Railroad Commission of Texas to the said interstate rates applicable from Shreveport, Louisiana, to said points in Texas, mentioned, and said Interstate Commerce Commission is without power, authority or jurisdiction to compel petitioners to reduce reasonable interstate rates to equalize same with lower intrastate rates installed by petitioners under the compulsion of the orders of the Railroad Commission of Texas.

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Second.

The Court erred in dismissing said petition and sustaining said Order of the Interstate Commerce Commission, for that:

The Interstate Commerce Commission is wholly without power or jurisdiction under the Interstate Commerce Act, approved February 4, 1887, and Acts amendatory thereof, to make any valid order controlling or seeking to control rates wholly within the State of Texas by the Railroad Commission of Texas under and by virtue of valid laws of the State of Texas duly authorizing it thereto.

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Third.

The Court erred in dismissing said petition and sustaining the said order of the Interstate Commerce Commission, for that:

The Congress of the United States is wholly without power to enact any valid law controlling or seeking to control purely intrastate rates applicable to commerce moving wholly between points situated within the limits of the State of Texas and made by the Railroad Commission of Texas in pursuance of authority duly and legally conferred by the Constitution and laws of that State.

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Fourth.

The Court erred in dismissing said petition and entering its final decree herein, sustaining the order of the Interstate Commerce Commission therein complained of, for that:

The uncontradicted evidence herein shows that the commodity rates complained of from Dallas towards Shreveport and from Houston towards Shreveport, applied wholly to points within the State of Texas; that said rates were duly ordered and installed by the Railroad Commission of Texas, which had full power to make and install the same under the Constitution and laws of the State of Texas; that petitioners and intervening petitioners, appellants herein, were forced under the compulsion of severe penalties to apply the same, and petitioners and intervening petitioners are and were wholly without right, power or authority under said laws of the State of Texas, to apply between said points any other or different rates than the rates so prescribed by the Railroad Commission of Texas, and the Interstate Commerce Commission having held in the order complained of that the commodity rates herein involved from Shreveport in the State of Louisiana to said points in the State of Texas were in and of themselves reasonable, petitioners and intervening petitioners, appellants herein, were and are wholly without power or authority to make or apply between said points in the State of Texas any other or different rates than those prescribed by the Railroad Commission of Texas and the Interstate Commerce Commission was and is wholly without power, authority or jurisdiction to compel petitioners and intervening petitioners, appellants herein, to install or apply between said points wholly within the State of Texas any other or different rates than those prescribed by the Railroad Commission of Texas.

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Fifth.

The Court erred in dismissing the petition of Houston East and West Texas Railway Company and Houston & Shreveport Railroad Company and the petitions of the intervening petitioners herein and in sustaining the order of the Interstate Commerce Commission herein complained of, for that:

The Interstate Commerce Commission had no power or authority or jurisdiction to make any order on the petitioners or intervening petitioners herein, requiring or compelling them to remove the discrimination found to exist by said Interstate Commerce Commission, said discrimination (if it be a discrimination) not being an undue or illegal discrimination, of which the Interstate Commerce Commission has, under Section 3 of the Act to Regulate Commerce or any other valid law of the United States, power, authority or jurisdiction to remove.

Wherefore, petitioners pray that said decree be reversed and that said United States Commerce Court be directed to enter a decree in accordance with prayers of your petitioners herein, cancelling said

order of the Interstate Commerce Commission and permanently enjoining the enforcement thereof.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY,
HOUSTON & SHREVEPORT RAILROAD COMPANY,

By JAS. G. WILSON,
H. M. GARWOOD,

Attorneys.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,

By JOSEPH M. BRYSON,
ALEX. S. COKE,

Attorneys.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,

By S. H. WEST,
EDW. A. HAID,

Attorneys.

175

In the United States Commerce Court.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY and
HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,
vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Intervening Respondent; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners.

Order Allowing Appeal.

(Filed May 12, 1913.)

Prayer of the petitioners for an allowance of appeal in the above entitled cause coming on to be heard, an appeal is hereby allowed to the Supreme Court of the United States to review the order and the final decree dismissing petitioners' complaint hereinbefore entered in this cause, and the cost bond is hereby fixed at One Thousand Dollars (\$1000.00).

Dated this 12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

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Bond on Appeal.

Filed May 12, 1913.

No. 67.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY and
HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Intervening Respondent; J. J. Meredith, Shelby
Taylor, and Henry B. Schreiber, Constituting the Railroad Com-
mission of Louisiana; Missouri, Kansas & Texas Railway Com-
pany of Texas, St. Louis Southwestern Railway Company, and St.
Louis Southwestern Railway Company of Texas, Intervening Peti-
tioners.

Know all men by these presents, That we, Houston, East and
West Texas Railway Company, and Houston & Shreveport Railroad
Company, Missouri, Kansas & Texas Railway Company of Texas, St.
Louis Southwestern Railway Company, and St. Louis Southwestern
Railway Company of Texas, as principals, and the Massachusetts
Bonding and Insurance Company, a Corporation of the State of
Massachusetts, as surety, are held and firmly bound unto the United
States of America, The Interstate Commerce Commission, and to
J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting
the Railroad Commission of Louisiana, in the sum of one thousand
dollars (\$1000.00) to be paid to the United States of America, The
Interstate Commerce Commission, J. J. Meredith, Shelby Taylor and
Henry B. Schreiber, constituting the Railroad Commission of Louisi-
ana. We bind ourselves and each of our successors and assigns
jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of May, A. D.
1913.

177 Whereas, heretofore to-wit: on the 29th day of April, 1913,
in a suit pending in the United States Commerce Court and
numbered No. 67 on the docket of said Court, wherein Houston, East
and West Texas Railway Company, and Houston & Shreveport
Railroad Company, were petitioners and United States of America
was respondent, and the Interstate Commerce Commission was inter-
vening respondent, and the Missouri, Kansas & Texas Railway Com-
pany of Texas, St. Louis & Southwestern Railway Company, and St.
Louis, Southwestern Railway Company of Texas, were intervening
petitioners, an order, judgment and decree was rendered against
said Houston, East and West Texas Railway Company, Houston &
Shreveport Railroad Company, Missouri, Kansas & Texas Railway
Company of Texas, St. Louis Southwestern Railway Company, and
St. Louis Southwestern Railway Company of Texas, dismissing the
petition of said Houston, East and West Texas Railway Company,
and said Houston & Shreveport Railroad Company, and taxing the

costs of said suit against said Houston, East & West Texas Railway Company and said Houston & Shreveport Railroad Company, petitioners, and

Whereas said Houston, East and West Texas Railway Company and Houston & Shreveport Railroad Company, Missouri, Kansas & Texas Railway Company, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, have appealed from said order and decree to the Supreme Court of the United States and have obtained citation directed to said United States of America, said Interstate Commerce Commission, said J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington within thirty days from the allowance of said appeal:

Now The condition of the above obligation is such that, if the said Houston, East and West Texas Railway Company, Houston & Shreveport Railroad Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, shall prosecute their said appeal to effect and shall pay all costs if they shall fail to make their said plea good, then the above obligation to be void; otherwise, to remain in full force and effect.

HOUSTON, EAST AND WEST TEXAS RAILWAY COMPANY,
HOUSTON & SHREVEPORT RAILROAD COMPANY,

By JAS. G. WILSON,
H. M. GARWOOD,
Attorneys.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,

By JOSEPH M. BRYSON,
ALEX. S. COKE,
Attorneys.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,

By S. H. WEST,
EDW. A. HAID,
Attorneys.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

By LEE B. MOSHER, *Attorney in Fact.*

[Seal of Massachusetts Bonding and Insurance Company.]

The above and foregoing bond approved and ordered filed this 12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

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In the United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

Præcipe for Record.

(Filed May 12, 1913.)

To the Clerk of the United States Commerce Court:

You will please prepare a transcript of the record in the above entitled cause to be filed in the office of the Clerk of the Supreme Court of the United States upon the appeals from the final order and decree of the Commerce Court entered April 29, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

1. Petition, with exhibits, of Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company.
2. Intervening petitions of Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.
3. Intervening petition of Railroad Commission of Louisiana.
4. Orders of Commerce Court permitting interventions.
5. Answer of Interstate Commerce Commission to petition of Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company.
6. Answer of Interstate Commerce Commission to intervening petition of Missouri, Kansas & Texas Railway Company of Texas.
7. Answer of United States to petition of Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company.
8. Answer of United States to intervening petition of Missouri, Kansas & Texas Railway Company of Texas.
9. Order of Commerce Court allowing answers of Interstate Commerce Commission and United States to petitions of original petitioners and intervening petitioners to stand as answers of Railroad Commission of Louisiana.
10. Final decree of United States Commerce Court.
11. Opinion of United States Commerce Court.
12. Petition for appeal and allowance of appeal; assignments of error; bond for appeal, and order approving same; citation on appeal

to United States, Interstate Commerce Commission and Railroad Commission of Louisiana.

H. M. GARWOOD,
Attorney for Appellants.

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United States Commerce Court.

No. 67.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY, HOUSTON & SHREVEPORT RAILROAD COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Railroad Commission of Louisiana, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 180 inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the office of the Clerk of said Court on the 12th day of May, A. D. 1913, as the same appear from the original record in the Clerk's Office of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 19th day of May, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

182 United States Commerce Court. Filed May 12, 1913. G. F. Snyder, Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

To United States of America, Interstate Commerce Commission, J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's office of the United States Commerce Court, wherein Houston, East & West Texas Railway Company, Houston & Shreveport Railroad Company, Missouri, Kansas & Texas Railway

Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas are appellants and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court this 12th day of May, 1913.

MARTIN A. KNAPP,

Presiding Judge United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 12th day of May, 1913.

BLACKBURN ESTERLINE,

*Special Assistant to the Attorney General,
For the United States.*

P. J. FARRELL,

For Int. Com. Com.

L. M. WALTER,

For R. R. Com. of Louisiana.

Endorsed on cover: File No. 23,712. U. S. Commerce Court. Term No. 567. Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company et al., appellants, vs. The United States, The Interstate Commerce Commission, et al. Filed May 22d, 1913. File No. 23,712.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 568.

THE TEXAS AND PACIFIC RAILWAY COMPANY ET AL.
APPELLANTS,

THE UNITED STATES, THE INTERSTATE COMMERCE
COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED MAY 22, 1913.

(23,713)



(23,713)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 568.

THE TEXAS AND PACIFIC RAILWAY COMPANY ET AL.,
APPELLANTS,

vs.

THE UNITED STATES, THE INTERSTATE COMMERCE
COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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a United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent; Interstate Commerce Commission, Railroad Commission of Louisiana, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, ss:

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 PETITION AND EXHIBITS.

Filed May 10, 1912.

In the United States Commerce Court.

No. 68. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition.

To the Honorable the Judges of the United States Commerce Court:

The Texas & Pacific Railway Company, a corporation duly and legally incorporated under the laws of the United States, files this its petition against the United States of America and thereupon complains and says:

I.

2 That petitioner is a carrier by rail engaged in the carriage of domestic commerce within the State of Texas and domestic commerce within the State of Louisiana respectively and of interstate commerce between the States of Texas and Louisiana and between the States of Texas and Louisiana and other states and territories of the United States and foreign countries and has been such carrier engaged in the carriage of such commerce

during the time of all the happenings hereinafter referred to and for many years prior thereto; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioner in the conduct of interstate and foreign commerce during the time it has been conducting such business have been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioner is informed and charges, just, fair and reasonable as to all parties, places, commodities and states interested therein.

II.

That heretofore, to-wit, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against your petitioner and other carriers engaged in interstate commerce, among others the St. Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company and others, said cause Leing No. 3918 on the docket of said Commission, wherein they complained of your petitioner and numerous railway companies, the names of which are set forth in said petition, which is herewith referred to and prayed to be taken

as a part of this petition as fully as if set out at length herein
3 and which will be filed in this cause, of an alleged discrimination in rates on various commodities and articles of commerce in said petition mentioned and set forth, as between Shreveport, Louisiana and distributing points in Texas to competitive points in the State of Texas, and for cause of discrimination alleged in said petition that the defendants named therein charged, collected and received from said distributing points in Texas to said competitive points, rates which are much less by any method of comparison than the rates exacted by defendants for the transportation of similar articles between Shreveport and the same destinations, thereby giving and creating an undue advantage in said competitive territory to the distributing points in Texas, and it being, among other things, alleged that "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas." That answers were filed to said petition by various defendants named therein, among others by your petitioner; that thereafter, by permission of the said Interstate Commerce Commission numerous pleas of intervention were filed both by shippers and commercial bodies in the State of Louisiana joining in the prayer of the complainants. That testimony was taken and arguments made in said cause, and the same was submitted to the Commission on January 16, 1912.

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III.

That on March 11, 1912, the Interstate Commerce Commission handed down a report and order in said cause. The majority of said Commission held with and decided in favor of the complainants and the minority of the Commission dissented from such holding.

IV.

The opinion of the majority of said Interstate Commerce Commission begins by stating what had been shown to be the policy of the Texas Commission and after quoting numerous utterances of the Railroad Commission of Texas the opinion, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the north and east into Texas were pursuing a policy hostile to the development of that state. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas Commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests."

That thereafter in said opinion the Interstate Commerce Commission stated the real nature of petitioner's complaint in said cause as follows:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The opinion then states that the Interstate Commerce Commission has no power or authority to prescribe rates for intrastate transportation within the State of Texas and propounds the following question:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?"

The Interstate Commerce Commission thereupon announces the conclusion that it has the power to prevent such discrimination as follows:

6 "An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rate of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce 'among the states' against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment
7 of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead."

That thereupon the opinion announces the following conclusions:
"We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis- tance. Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mincola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	137.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

8 On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Dis- tance. Miles	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

9 (7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

In accordance with said opinion and conclusions an order was entered making effective the conclusions so announced, the same to become operative on or before the 1st day of May, 1912, and to remain in force for a period of not less than two years thereafter. Concurring opinions were filed, both of which reached the conclusion that the Interstate Commerce Commission had the power to prevent discrimination against interstate rates by state rates which covered a part of the line of transit of the interstate route. The three dissenting opinions announced the proposition that the Interstate Commerce Commission had no authority under the Act to Regulate Commerce or otherwise, to control state rates, or to adopt intrastate rates made under state authority as measures of interstate rates without finding that the interstate rates complained of were unreasonable and that the intra-state rates were reasonable, and that the order based upon the opinions of the

majority exceeded the powers of the Interstate Commerce Commission under the law and was therefore null and void. A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is hereto attached, marked Exhibit A and is prayed to be taken as a part hereof as fully as if set out at length herein. That thereafter on or about the 19th day of April, 1912, prior to the date when said order by its terms was to become effective, the Interstate Commerce Commission by its order, duly entered in that behalf, extended the effective date of said order to June 1, 1912. That said order by its terms is directed only against your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company, but petitioner alleges that the Missouri, Kansas & Texas Railway Company of Texas extends from the City of Dallas, in said State of Texas, to the said City of Shreveport, and likewise the St. Louis Southwestern Railway Company of Texas, in connection with its affiliated line, the St. Louis Southwestern Railway Company, extends from said City of Dallas to said City of Shreveport and each of said

11 companies extends to various commercial points of distribution in east Texas which are in competition with the City of Shreveport and also with the various cities and towns situated on the lines of your petitioner and also upon the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company and by reason of competitive conditions it is necessary for these lines, both of which were parties to said cause, to adopt whatever rates are in force upon the lines of your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company. That the line of your petitioner extends from the City of New Orleans to El Paso, Texas, a distance of 1,160 miles, and connects with various others railways in the States of Texas and Louisiana and over which by through routes and joint rates it transports large quantities of interstate commerce to and from the City of Shreveport and to and from various states and territories of the United States through said city. That the City of Shreveport has a population of about 30,000 inhabitants and is situated in the northwestern part of the State of Louisiana, about 42 miles from the Texas-Louisiana state line. That it does a large jobbing business and there is tributary thereto a large territory within the State of Texas. That the City of Dallas has a population of approximately 100,000 inhabitants, and is situated in the northern part of Texas, approximately 73 miles from the Oklahoma-Texas state line and 113 miles west of the City of Shreveport, and does a large jobbing and distributing business in the territory between Dallas and Shreveport, which territory may be described as competitive territory for the job-

12 bing interests of the two cities. That the City of Houston is situated in the southeastern part of the State of Texas, has a population of approximately 110,000 inhabitants and is distant from Shreveport approximately 231 miles. It is a large jobbing center and the territory in Texas lying between it and said City of Shreveport is competitive territory for the jobbing interests of the two cities. That the City of Dallas is connected with the City

of Shreveport by the line of your petitioner and also by that of the Missouri, Kansas & Texas Railway of Texas and by the St. Louis Southwestern Railway Company of Texas in connection with its affiliated line, the St. Louis Southwestern Railway. The City of Houston is connected with said City of Shreveport by the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company.

V.

That in said petition of the Railroad Commission of Louisiana hereinabove referred to the rates, both class and commodity, were complained of as being unreasonable in themselves and also as discriminatory against the City of Shreveport, in that for equal distances rates from Shreveport to the said competitive territory within the State of Texas were greater than the rates from the Texas cities and particularly said cities of Houston and Dallas, it being alleged in said petition that the rates from the Texas cities to said competitive territory had been established by the Texas Commission for the purpose of protecting Texas manufacturers and whole-

13 salers in said competitive territory against the manufacturers and wholesalers in the City of Shreveport and that the Texas Commission had so framed the rates from the Texas cities to this competitive territory as to preserve it for Texas manufacturers and jobbers and prevent the Shreveport manufacturers and jobbers from making sale of their goods and wares in this competitive territory. While the rates were alleged to be unjust and unreasonable in themselves the real contention of the Louisiana Commission in said cause was that the same effected an unjust and unlawful discrimination in favor of Texas manufacturers and jobbers as compared with the rates which were established by the Texas Commission to competitive points. That there was no substantial evidence introduced on the hearing of said cause to the effect that the rates complained of, either class or commodity, were unjust or unreasonable in and of themselves and the Interstate Commerce Commission in its report and order does not find that the several commodity rates complained of were either unjust or unreasonable in and of themselves, but does find, basing its finding solely and exclusively upon a comparison of said commodity rates from Shreveport to Texas with the commodity rates in force between points in Texas for equal distances, that said commodity rates between Shreveport and Texas were unjustly and unduly discriminatory, all of which will more fully appear from the report and order of the Commission hereinabove referred to. That the power of the Interstate Commerce Commission under the law, as petitioners, are informed and believe and, therefore, charge, was

14 and is to find whether or not the commodity rates established by the carriers and complained of by the Louisiana Commission were in themselves unjust and unreasonable and unless they found them so to be to continue them in force and if they found them so to be to prescribe rates in themselves just and reasonable. Your petitioners aver that the Interstate Commerce Commission has wholly failed and refused to pass upon the ques-

tion of the reasonableness of the commodity rates established by the carriers and complained of in said cause and made no finding that they were in any respect unjust or unreasonable, but held that such rates discriminated against the City of Shreveport, because for equal distances they were greater than the rates established by the Railroad Commission of Texas from the Cities of Dallas and Houston and other points in Texas to apply on traffic originating at such points and destined to points within the State of Texas and wholly carried within that state, such traffic being entirely within the State of Texas and said rates being established by the Railroad Commission of Texas under circumstances hereafter set forth.

VI.

That heretofore, to-wit, on or about the 21st day of April, 1891, the legislature of the State of Texas, in pursuance of a constitutional provision duly authorizing it thereto passed an act creating the Railroad Commission of Texas with full and complete power over all intra-state railroad traffic. The said act gives the Railroad Commission of Texas power to classify freight, to fix reasonable rates for transportation of freight between points within the state, to
 15 fix different rates for different railroads, for different lines under the same management, and for different parts of the same line and to change and alter said rates. That said act likewise confers power upon the Railroad Commission of Texas to correct abuses in the management of railways and confers upon that body large and comprehensive powers in the control, management and operation of railways within that state. That since the passage of the original act hereinabove referred to, amendments and additions have been made thereto conferring upon said Commission power to make freight and passenger rates to take immediate effect or at such time as might be fixed, whenever an emergency shall arise, the sufficiency of which emergency was to be determined by said Commission and also conferring upon said Commission power temporarily to suspend existing rates. That under and by virtue of the laws so passed by the legislature of the State of Texas, the Railroad Commission of Texas has established and enforced from the time of its creation, rates, tariffs, regulations and classifications on all and every character of property whatsoever transported by railroads between points in the State of Texas and have enforced the observance of same. That under the provisions of said Railroad Commission Act the Railroad Commission of Texas has full power and authority to initiate and establish absolute rates. That the carriers thereunder have no right under the law to charge, demand or receive a greater or less rate than that fixed by the Railroad Commission for the carriage either of freight or passengers. That a departure from the rates so established by the Railroad Commission of Texas is made an offense punishable by severe
 16 penalties; that to charge, demand or receive a greater rate than that fixed by the Commission is declared an extortion under the act punishable by fine, accruing to the State of

Texas, of not less than \$500 nor more than \$5,000, and in addition to the penalties thus accruing to the State of Texas, collection of which is enforced by the order of the Railroad Commission of Texas through suits by the Attorney General of said state acting under its direction, a penalty accrues to the individual so charged or paying said excessive rate of not less than \$125 nor more than \$500. That to charge a less rate than fixed by the Commission of Texas is a violation of the order of said Commission, punishable by fine, collected as above stated, of not more than \$5,000, all of which will more fully appear from Exhibit B, hereto attached, and hereby made a part of this petition, and is prayed to be taken and considered as fully as if set out at length herein. That under said act the rates, rules, orders and regulations of the Railroad Commission of Texas cannot be collaterally assailed and are held to be conclusive unless set aside in a direct action brought for that purpose against the Railroad Commission of Texas and unless shown in such proceeding to be unjust and unreasonable by clear and satisfactory proof, which clear and satisfactory proof has been defined by the Supreme Court of the State of Texas the court of highest and ultimate jurisdiction in said state, to be proof beyond a reasonable doubt. That said Supreme Court of the State of Texas has held that the Railroad Commission of Texas has with regard to the initiation and establishment of rates all powers possessed by the railways themselves prior to the creation of said Commission. That

17 from the date of its installation under the laws aforesaid the Railroad Commission of Texas has continuously exercised the powers conferred by said act and other acts of the legislature of the State of Texas amendatory thereof and supplementary thereto in the fixing of rates within the State of Texas, for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that state from points beyond the state were reduced in such manner as in the judgment of the Railroad Commission of Texas injuriously affected the interests of manufacturers, wholesalers, jobbers and others within that state.

VII.

That the rates fixed by the Texas Railroad Commission on all articles and commodities complained of by the Louisiana Commission were and are unjustly low and were less than just and reasonable rates. That in order to preserve the competitive territory of northeastern Texas lying between Dallas and the Arkansas-Texas and Louisiana-Texas state lines as a territory in which Dallas and other manufacturers and merchants might overcome competition from points without the state the Railroad Commission of Texas established distance rates which were 80 per cent. of their standard distance class rates and on a number of commodities applied the same percentage of their standard distance commodity rates over the following lines of railway: The Texas & Pacific Railway, Deni-

18 son, Pacific & Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana and Waskom and intermediate points; and between points on the Missouri, Kansas & Texas Railway Company of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points; and between points on the St. Louis Southwestern Railway Company of Texas east of and including Sherman, Plano and Dallas and north of and including Tyler, but not from Texarkana; said rate adjustment being set out in Circular No. 1178 of said Railroad Commission of Texas, effective September 7, 1900, as amended by Circular No. 1531, effective February 10, 1902, which said order is attached, marked Exhibit C and made a part hereof. The said Commission gave as its reason for the installation of said special rates of 80 per cent. of the standard distance rates applicable between other points within the State of Texas, that the inbound interstate rates to Shreveport and Texarkana were so far less than the inbound interstate rates to Dallas and other Texas distributing points that said cities and distributing points were unable to compete with said cities of Texarkana and Shreveport for the business of the intermediate towns, cities and communities. Your petitioner alleges that the standard distance scale of rates of the Texas Commission on the classes and commodities involved herein for the several distances involved in the order of the Interstate Commerce Commission herein, by reason of the lack of density of traffic, and of the connection of said mileage scale of rates with the blanket or common point territory provided in the rules and regulations of the Texas Railroad Commission are unjust and unreasonable
19 ably low in and of themselves and that said 80 per cent. of said standard rates prescribed in said circular of the Railroad Commission of Texas hereinabove referred to is inherently unreasonable and unjust.

VIII.

That your petitioner and all of the Texas carriers, including those made parties to said petition of the Railroad Commission of Louisiana, recognized that the rates established by the Railroad Commission of Texas were unjust and unreasonable and protested against the same, but notwithstanding such protest said Commission installed said rates although they were unreasonably low and non-compensatory, and your petitioner and said Texas carriers have obeyed and accepted the same for the reason that non-observance thereof would have made them and each of them liable to prosecution and extreme and severe penalties, your petitioner being advised and believing that the making of intra-state rates was within the exclusive jurisdiction of the Railroad Commission of Texas and then believing and now believing that the Interstate Commerce Commission was wholly without power, authority or jurisdiction to make such intra-state rates the legal measure of interstate rates. Your petitioner further alleges that it accepted said rates so prescribed by the Railroad Commission of Texas for the reason that it was advised and believed that under the broad powers conferred upon the Railroad Commission of Texas it would be extremely difficult, if not wholly

impossible, to set aside said rates without attacking the whole
20 body of rates established and enforced by the Railroad Commission of Texas; and your petitioner avers that the Railroad Commission of Texas asserts and by its continuous practice has indicated that it has the right under the laws of said state to so adjust rates wholly within the State of Texas as to enable cities, towns and communities within said state to successfully compete with cities, towns and communities without said state, and on information and belief petitioner alleges the fact to be that said Railroad Commission of Texas, if in its judgment it believes that the rates made by the order of the Interstate Commerce Commission herein complained of will injuriously affect the commerce of the cities and towns within the area covered by said order, will further reduce said intra-state rates in order to meet the competition created by the order herein complained of; and petitioner further avers that the order of the Interstate Commerce Commission herein complained of leaves petitioner and all other carriers affected thereby without relief in this: that the Railroad Commission of Texas continuously reduces the intra-state rates in order to meet the interstate competition, whereupon the Interstate Commerce Commission reduces the interstate rates for the purpose of meeting the intra-state competition whereby your petitioner and the other carriers affected must suffer the continuous reduction of rates not justified by proof or finding that the rates so reduced are unjust or unreasonable in and of themselves; that your petitioner being wholly without power to raise the intra-state rates so adopted by the Interstate Commerce Commission as a legal measure of the justness of the interstate rates is wholly without remedy in the premises.

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IX.

That said order of the Interstate Commerce Commission herein complained of provides that your petitioner shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance; that the State of Texas has a classification of its own in which most articles are differently classed from the classification provided in the Western Classification and in the great majority of instances carload minima in said Texas Classification are much less than in Western Classification and the mixtures are different under the Texas Classification, a jobber being able to substantially make his own mixture of any kind of freight, the result being that movement of freight under the Texas Classification is far more onerous upon the carriers than the movement of freight under the Western Classification and the rates received for carrying any given item of traffic returning less revenue to the carriers than if carried under Western Classification; that the Interstate Commerce Commission adopts the Western Classification in regard to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, but under the order of said Commission herein complained of your petitioner and all other carriers affected thereby, in

applying to traffic moving out of Shreveport the rates established by the said order, will be compelled to adopt the Texas Classification, so that by the establishment of said rates the Interstate Commerce Commission has discriminated against your petitioner and other carriers affected thereby; that except as to Shreveport on interstate traffic moving from Western Classification territory into other parts of Texas the Western Classification will control. Said Western Classification has been adopted by the Louisiana Commission applying to freight moving from one point in the State of Louisiana to another point in the State of Louisiana, so that the order of the Interstate Commerce Commission discriminates in favor of Shreveport in Louisiana and works an unjust and unlawful discrimination against carriers handling the Shreveport traffic destined to Texas.

X.

Your petitioner shows that there is a large traffic in the articles and commodities mentioned and described in said order of said Interstate Commerce Commission made in said case No. 3918 transported by petitioner from points outside of Texas through Shreveport and by your petitioner from distributing points in Texas to that portion of the territory covered by said order, for which transportation your petitioner now receives and has received a large revenue in the way of freight charges; that the order so promulgated by said Interstate Commerce Commission will materially reduce the receipts of your petitioner from such transportation. Petitioner on information and belief avers the facts to be that the rates on a large amount of traffic in the territory along and adjacent to the Mississippi River are exceedingly low by reason of the fact that such traffic can be and is transported by water over said river and its tributaries and over the Gulf of Mexico and the waters with which it connects; that this is especially true with reference to interstate freight traffic; that the town of Shreveport, Louisiana, is situated on the Red River, which is a tributary of the Mississippi River, and is nearer the Mississippi River than the Texas distributing points referred to in said cause No. 3918, and that Shreveport is connected with the Mississippi River by several lines and roads of railway and is accorded lower rates on inbound freight by reason of its location as aforesaid than are accorded to distributing points in Texas mentioned and described in said cause No. 3918 and in the order made in said cause, and that, therefore, the City of Shreveport and the territory adjacent thereto receive and have the benefit of these lower rates, and that the interests in whose behalf the complaint was made in said cause No. 3918, and for whose benefit the order was entered therein, have and receive the benefits of the lower rates on freight traffic aforesaid, and that when such rates are added to the outbound rates from Shreveport it will be found, as your petitioner is informed and believe, and on such information and belief alleges the facts so to be, that the total transportation charge on the commodities and classes mentioned and described in said order, under existing rates, to the territory mentioned and described therein, handled by the

said interests at Shreveport, will not be materially higher than the total transportation charge will be on the same commodity handled into the same territory from the distributing points in Texas directly affected by said order. Your petitioner is informed and be-

24 lies, and on such information and belief allege- the facts to be, that in most instances the total transportation charges are less. Your petitioner is further informed and believes, and on such information and belief allege- the facts to be, that if said order of the Interstate Commerce Commission herein complained of is enforced that on the great volume of the freight traffic referred to by said order the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and will be much lower than the total transportation charges on freight traffic which moves into and out of the Texas distributing points to the said territory; that thereby a large amount of freight traffic now handled by your petitioner from Texas distributing points to said territory and from points outside of Texas other than Shreveport will be transferred to the business men of Shreveport from the distributing points in Texas aforesaid and from the distributing points outside of Texas other than Shreveport, and that in consequence thereof it will entail upon your petitioner large and substantial losses in freight revenue as is hereinafter more specifically set out.

Petitioner further shows that by reason of the provisions of the laws regulating interstate commerce, and especially the provisions of Section 4 of the said act as amended, and natural and competitive conditions as to water rates, rail rates and commercial competition, that the material reductions made from Shreveport to Texas points mentioned and described in said order will necessarily disturb and reduce freight rate conditions over a very large scope of territory; that your petitioner and other interested lines of railway have

25 always heretofore tried to adjust fairly, justly and reasonably the interstate rates to and from all points in the Southwest so as to prevent unreasonable discriminations and unduly prejudicial conditions in any part of said southwestern territory; that a large proportion of the classes and commodities on which material reductions are made by such order of said Interstate Commerce Commission in said cause No. 3918 are transported into southwestern territory through various gateways leading thereto, such as Chicago, Kansas City, St. Louis, Little Rock, Memphis, Vicksburg, Shreveport, New Orleans, Galveston, and other minor gateways; that the material reductions made by said order on a portion of the line over one of the main channels leading to and from the low rates on the Mississippi River will of necessity produce a reduction in the transportation charges from many of the other gateways; that for many years rates from all defined territories into southwestern territory, including territory affected by the order in question, have been based on St. Louis, the rates from defined territories being made by adding or deducting certain differentials to or from the St. Louis rate; that the rates from Shreveport have always been a differential under the St. Louis rate; that if said rate is further reduced as is compelled by

the order herein complained of, said reduction will of necessity force reductions in rates from St. Louis and the defined territories hereinabove referred to, or the great bulk of said business will flow through Shreveport and traffic flowing in through the other gateways above referred to will be greatly and materially reduced. Your petitioner

therefore avers that said order of the Interstate Commerce Commission will effect a reduction in rates on practically all the classes and commodities described in said order to the entire State of Texas, and will effect a reduction in rates thereon to points in many other states in the Southwest and to the Republic of Mexico, all of which reductions in rates will result in a reduction in revenue of your petitioner and the other carriers affected thereby.

XI.

Your petitioner alleges that if said order becomes effective the reduction in the annual revenues of your petitioner will be approximately —.

Your petitioner alleges that the aggregate, actual, present value of its properties is not less than —; that the net earnings of your petitioner for the year ending June 30, 1911, after deducting interest on its bonded debt of — were —, and that based upon its earnings and expenses from July 1, 1911, to February 1, 1912, petitioner is informed and believes, and on such information and belief alleges the fact to be, that its net earnings, after deducting the interest on bonded debt as aforesaid, will not exceed —. Your petitioner therefore avers that the reductions made by the order herein complained of will not permit it to earn a reasonable or just return upon the value of its properties as alleged, and will amount to a confiscation thereof, and will operate to deprive it of its property without due process of law.

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XII.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, this petitioner says:

(1) That the order of the Interstate Commerce Commission made in said cause No. 3918 fixing commodity rates upon the lines of your petitioner was made without power or authority either directly or indirectly conferred upon the Interstate Commerce Commission, because your petitioner says that, while under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States the Congress of the United States has power "to regulate commerce with foreign nations, among the several states and with the Indian tribes," the tenth amendment of the Constitution of the United States provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," and petitioner says that, while by said provisions power was conferred upon Congress to regulate interstate and foreign commerce and commerce with the Indian tribes, no power was conferred to regulate or interfere with intrastate commerce, and that this lack of power was fully recognized in

the Act to Regulate Interstate Commerce as originally enacted and subsequently amended.

That by the first section of the Act to Regulate Commerce, it is provided "that the provisions of this Act shall apply to any corporation, * * * to any common carrier, or carriers, engaged in the transportation of passengers or property wholly by
28 railroad, * * * from one state or territory of the United States, * * * to any other state or territory of the United States, * * * or from any place in the United States to an adjacent foreign country, etc." Your petitioner avers that this provision means that all the provisions in this Act to Regulate Commerce are limited to the commerce mentioned in this section, and respectfully show- that this is made more evident by the proviso which is added to the first section, which declares "That the provisions of this Act shall not apply to the transportation of passengers or property * * * wholly within one state, etc."; whereby it is provided, as your petitioner avers that none of the provisions, including the provision against discrimination, shall apply in any manner whatsoever to the transportation of property wholly within one state, and that when said Act was so amended as to confer upon the Interstate Commerce Commission power, after finding that any rates or charges, classifications, regulations or practices whatsoever, were unjust and unreasonable, or unjustly discriminatory or unduly prejudicial or preferential, or otherwise in violation of any provision of the Act to prescribe what would be just and reasonable, individual or joint rate, or rates, classifications, regulations or practices to be thereafter followed, that no power or authority was thereby conferred upon the Interstate Commerce Commission, or attempted to be conferred upon the Interstate Commerce Commission to in any way prescribe rates, regulations or practices to be observed by common carriers with reference to transportation of property
29 wholly within one state; and your petitioner avers that it is informed and believes, and charges the fact to be, that the order made by said Interstate Commerce Commission in said cause 3918, fixing commodity rates upon lines of your petitioner, was made without authority or power vested in said Commission to make the same, and is in violation of the Act to Regulate Commerce and the amendments thereof, and of the provisions of the Constitution of the United States, as hereinbefore set forth, and is therefore void.

(2) That said order of said Interstate Commerce Commission is, for the reasons hereinbefore set forth, unreasonable and unjust and, as no power or authority is conferred upon the Interstate Commerce Commission to make or promulgate or enforce any order that is unreasonable or unjust, said order is therefore void.

(3) Said order, in so far as same undertakes to fix and direct the installation of commodity rates upon the lines of your petitioner, is invalid and void for the reason that there was no evidence before said Interstate Commerce Commission that the commodity rates complained of were unjust or unreasonable in and of themselves, and the order of said Interstate Commerce Commission wholly fails to find that said rates were unreasonable in and of themselves, and

wholly fails to find that the commodity rates directed by the said commission to be installed by your petitioner are reasonable within themselves, nor was there any evidence before the Interstate Commerce Commission by which said Commission could find that the rates so ordered to be installed were just or reasonable within themselves.

(4) That, for the reasons hereinbefore set forth, said order
30 of said Interstate Commerce Commission deprives petitioner, of its property without due process of law and is the taking of private property for public use without just compensation in violation of the fifth amendment of the Constitution of the United States, and is therefore void.

XIII.

Petitioner says that, as hereinbefore alleged, said order of the Interstate Commerce Commission becomes effective by its terms on the 1st day of June, 1912, and that if petitioner is compelled to install and enforce the rates therein provided for, it will suffer irreparable damage.

Wherefore, your petitioner prays that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, and that on such final hearing the said order of said Commission of date March 11, 1912, be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking
31 any steps or instituting any proceedings for the enforcement thereof; that said rates so established by the Commission be declared to be unjust and unreasonable; and petitioner prays for general and special relief as the equities of the case may warrant.

T. J. FREEMAN,
HENRY G. HERBEL,
Solicitors for Petitioner.

32 STATE OF ILLINOIS,
County of Cook, ss:

I, J. B. Payne state upon oath that I am the Agent of the Texas & Pacific Railway Company, petitioner in the above entitled and numbered cause, and as such am authorized to make this affidavit; that all allegations of fact set forth in said petition are true, and where alleged upon information and belief I believe them to be true.

J. B. PAYNE.

Sworn and subscribed by the said J. B. Payne before me, the undersigned authority, this the 7th day of May, A. D. 1912.

[NOTARIAL SEAL.]

IRVING O. KOSCHE,
Notary Public in and for the County
of Cook, State of Illinois.

My commission expires April 17, 1913.

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EXHIBIT A.

Opinion No. 1813.

Before the Interstate Commerce Commission.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Decided March 11, 1912.

Report and Order of the Commission.

34

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers; Held,

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.
2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a state, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate
 35 carrier may discriminate against interstate commerce because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.
4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.
5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendant's lines under like condition.

Walter Guion, R. G. Pleasant, W. M. Barrow, J. J. Meredith, George T. Atkins, Jr., and Luther M. Walter for complainants.

Baker, Botts, Parker & Garwood, H. A. Scandrett, and F. C. Dillard for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, E. B. Perkins, Hiram Glass, W. F. Murray, and Roy F. Britton for St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

36 A. S. Coke, A. H. McKnight, and J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company;

Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, H. G. Herbel, and N. M. Leach for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, interveners.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and J. L. Williams for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadwick for Penola county, Tex., interests, interveners.

Report of the Commission.

LANE, *Commissioner*:

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

37 The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas, and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved.

Policy of the Texas Commission.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented

thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

"AUSTIN, TEXAS, September 12, 1911.

Mr. H. B. Pitts, Sec'y Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For

the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours respectfully,

ALLISON MAYFIELD

Chairman."

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates. See Commercial Club of Omaha v. C., R. I. & P. Ry. Co., 6 I. C. C. 675; Daniels v. C., R. I. & P. Ry. Co., 6 I. C. C. 458; Eau Claire Board of Trade case, 5 I. C. C., 293; Savannah Bureau of Freight & Transportation case, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that

the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive

39 law attempted successfully to prescribe and define the channels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

"To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in

ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are

favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state.

Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders."

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

"This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipments would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates." (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

"The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues

on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in

less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment."

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points are not now so

low as to cause the Texas commission to indulge the fears
42 which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See *R. R. Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See *Nineteenth Annual Report, R. R. Commission of Texas*, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C D, and E rates, was reduced by 20 per cent: 1. Be-

tween points on the St. Louis Southwestern Railway of Texas east of Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

"Ruling.—Rates provided in this adjustment are not available on shipments to or from Texarkana."

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

43 We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours truly,

J. R. CHRISTIAN, *G. F. A.*"

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

"Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the

establishment of such an arrangement would not meet with the approval of this commission."

The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

The Problem Raised.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

44 With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over inter-

state commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides
45 them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

Power and Policy of Congress.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates,

tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war

46 preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, Northern Securities case, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in Gloucester Ferry case, 114 U. S., 203, 204.)"

Construction of the Law.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as

47 against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly

discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers, under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted

in a real or substantial sense by applying the requirements of
48 these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate. If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part,

out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, *Safety Appliances* case, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." *Mondou v. N. Y., N. H. & H. R. R. Co.*,

223 U. S., 1, decided January 15, 1912. It is not merely the 49 commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to

prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburg; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one,

50 we believe they indicate very clearly what the view of that tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from *Gibbons v. Ogden*:

"It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states*. (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop at the jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines*. * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists*. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce 'among the several states.'* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

"There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of commerce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation."

Then is cited with approval language from the decision in *Hall v. DeCuir*, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

"The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: 'While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet such just a case that the commercial clause in the constitution was adopted.'"

Again the report quotes from *Brown v. Houston*, 114 U. S., 622.

"In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations."

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

"Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate Commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state."

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

"The provisions of the bill are based upon theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subject to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they

52 were helpless. They appealed to no court for relief, nor to this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce "among the states" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Paull, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, Chairman concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in *Reliance Textile & Dye Works v. Ry. Co.*, 13 I. C. C., 48. In that proceeding the complaint contended that rates from the mills to its dye works, combined with rates from its dye works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from

certain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

"To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

* * * * *

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

In that proceeding the Commission failed to find the fact of discrimination, and no order was therefore required.

In *Saunders v. Southern Express Co.*, 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

56 There was no claim of any intent to prefer Mobile to Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said

that the reasonableness of the rates was being contested before the Alabama commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with his order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In *Andy's Ridge Coal Co. v. S. Ry. Co.*, 18 I. C. C.; 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from
57 certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no

state commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

58 Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the Andy's Ridge case was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through

movement of the traffic from the points at which it is produced or manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently

59 can never be settled until they have been passed upon by the court that is empowered to speak the last word. In this

question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for interstate transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory * * *"

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substan-

tial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Commission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may commend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore, seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their

views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its interstate rates also run; the only duty it may perform is carefully to ascertain and follow the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy of the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of Mr. Commissioner Clements and Mr. Commissioner McChord. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in *Saunders v. Southern Express*

62 Co., 18 I. C. C., 415, which presented the precise question in an even more direct form, I had occasion carefully to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden upon such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of interstate commerce may forbid

discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This, however, it has not yet undertaken to do. In my judgment the language of the proviso of section 1 admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McCHORD, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of traffic to undue or unreasonable prejudice or disadvantage.

63 Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimination voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination to determine whether or not the same was undue, and where we have found the situation to be one over which

the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and, from the operation of this carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some instances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in *East Tenn., Va. & Ga. Ry. Co. v. I. C. C.*, 181 U. S., 1:

"The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers."

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reasonableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rates from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned is not undue. In considering, a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in *Saunders & Co. v. Southern Express Co.*, 18 I. C. C., 421, said:

"The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates."

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the

intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality, or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign

country from or to any state or territory as aforesaid." To
65 my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not

give to us power which has specifically been withheld. As we look to the act of Congress rather than to the constitution for our powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase "which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to an order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in *Howland v. I. C. R. Co.*, 207 U. S., 463, said:

"It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In *Sands v. Mississippi River Improvement Co.*, 123 U. S., 288, the court, by Mr. Justice Field, said:

"Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

67 The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward co-

ordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged with this Commission; and if not vested in the Congress, the final remedy is to be found, as said in *Taylor v. Beckham*, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often persuasive, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I would not further refer to it except for the great length with which

68 the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the *Pullman* case, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the *Pullman Company*. The excerpt from *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S., 261, is quoted from *Haskell v. Cowham*, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the *Safety Appliance* case, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of *Gibbons v. Ogden*, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to Fulton and Livingston to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to intrastate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is wholly domestic or internal and gives to Congress exclusive control over the remainder."

69 The quotation from *Gibbons v. Ogden* would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to intermingle with. A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from *Gibbons v. Ogden*:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

"The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce."

In *Ames v. U. P. R. R. Co.*, 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

70 "Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates."

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore leads by following the judgment of the state government, to whom it says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside

from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

"The fact which vitiates the provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. (*L. & N. R. Co. v. Eubank*, 184 U. S., 41.)"

71 To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unnecessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

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Appendix.

EXHIBIT 1.

Class Rates Dallas, Tex., to Points on the Texas & Pacific Ry.

Station.	Distance. Miles.	Class.									
		1	2	3	4	5	A	B	C	D	E
		Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Orphans Home	7.4	13	12	10	8	6	7	6	5	5	4
Mesquite	12.1	15	13	12	10	7	8	6	5	5	4
Forney	20.3	17	15	13	11	9	10	8	6	6	5
Lawrence	27.8	20	18	16	14	12	13	11	9	7	6
Terrell	31.8	21	19	17	15	13	14	12	10	8	6
Elmo	38.3	23	21	19	17	15	16	14	11	9	7
Wills Point	47.4	26	24	22	20	17	18	15	12	10	8
Edgewood	54.6	29	27	25	23	19	20	17	14	12	9
Grand Saline	65.1	32	29	27	25	20	21	18	15	13	10
Mineola	78.2	37	34	32	30	23	24	21	18	14	11
Crow	89.2	40	37	35	32	24	25	22	19	15	12
Hawkins	95.7	42	39	36	33	25	26	23	20	16	13
Big Sandy	101.4	44	41	38	35	26	27	24	21	16	13
Gladewater	111.5	48	45	41	39	28	29	26	23	17	14
Camps	117.1	50	47	43	41	29	30	27	24	18	15
Willow Springs	120.6	51	47	43	41	30	31	28	25	18	15
Longview	124.0	51	47	43	41	30	31	28	25	18	15
Hallsville	134.0	54	50	45	43	31	32	29	26	19	16

Marshall	147.9	57	53	48	46	33	34	31	27	19	16
Scottsville	155.6	59	55	50	48	34	35	32	27	20	16
Jonesville	163.7	61	56	51	49	35	36	33	28	20	16
Waskom	167.0	62	57	51	49	35	36	33	28	20	16
Greenwood	172.5	101	84	74	71	54	58	51	40	28	21
Shreveport	189.7	101	84	74	71	54	58	51	40	28	21

Class Rates Shreveport, La., to Points on the Texas & Pacific Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Waskom	22.7	39	27	23	23	23	23	22	17	13	9
Jonesville	26.0	40	28	24	24	24	24	23	17	14	9
Scottsville	34.1	43	30	26	26	26	26	24	18	14	9
Marshall	42.0	56	42	35	33	30	33	30	23	19	13
Hallsville	55.2	60	46	40	35	30	35	30	25	21	15
Longview	65.7	60	49	40	35	30	35	30	25	21	17
Willow Springs	69.1	85	71	55	47	44	47	41	36	25	18
Camps	72.6	85	71	55	47	44	47	41	36	25	18
Gladewater	78.2	85	71	59	50	48	50	45	36	25	18
Big Sandy	88.3	85	71	64	50	49	50	46	36	25	18
Hawkins	94.0	85	72	66	53	49	53	46	36	25	18
Crow	100.5	95	84	67	55	49	53	46	36	25	18
Mineola	111.5	79	64	58	55	47	48	44	36	25	18
Grand Saline	124.6	98	84	67	60	49	53	46	36	25	18
Edgewood	135.1	98	84	67	60	49	53	46	36	25	18
Wills Point	142.3	98	84	67	60	49	53	46	36	25	18
Elmo	151.4	105	92	74	71	54	58	51	40	28	21
Terrell	157.9	105	92	74	71	54	58	51	40	28	21
Lawrence	161.9	105	92	74	71	54	58	51	40	28	21
Forney	169.4	105	92	74	71	54	58	51	40	28	21
Mesquite	177.6	105	92	74	71	54	58	51	40	28	21
Orphans Home	182.3	105	92	74	71	54	58	51	40	28	21
Dallas	189.7	101	84	74	71	54	58	51	40	28	21

73 Class Rates Houston, Tex., to Points on the Houston, East & West Texas Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Humble	17.1	16	14	12	10	8	9	7	6	5	5
Paull	21.9	18	16	14	12	10	11	9	7	6	5
New Caney	28.3	20	18	16	14	12	13	11	9	7	6
Midline	36.5	23	21	19	17	15	16	14	11	9	7
Cleveland	43.2	25	23	21	19	17	18	15	12	10	8
Shepherd	55.3	29	27	25	23	19	20	17	14	12	9
Goodrich	63.4	32	29	27	25	20	21	18	15	13	10
Livingston	71.5	34	31	29	27	21	22	19	16	13	10
Leggett	79.7	37	34	32	30	23	24	21	18	14	11
Valda	83.7	38	35	33	30	23	24	21	18	14	11

Moscow	87.5	40	37	35	32	24	25	22	15	15	12
Carrigan	93.0	41	38	35	32	25	26	23	20	16	13
Renova	103.1	45	42	39	36	27	28	25	22	17	14
Lufkin	118.2	50	47	43	41	29	30	27	24	18	15
Angelina	126.4	52	48	44	42	30	31	28	25	18	15
Nacogdoches	138.3	55	51	46	44	32	33	30	26	19	16
Appleby	147.4	57	53	48	46	33	34	31	27	19	16
Garrison	158.4	60	56	51	49	34	35	32	28	20	16
Timpson	166.8	62	57	51	49	35	36	33	28	20	16
Teneha	176.4	65	60	54	52	37	38	35	29	21	16
Joaquin	187.9	67	62	56	54	38	39	36	30	21	16
Shreveport	230.7	60	50	40	30	22	25	20	17	16	15

Class Rates Shreveport, La., to Points on the Houston East & West Texas Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Joaquin	42.8	40	28	24	24	24	24	23	17	14	9
Teneha	54.3	51	42	34	31	26	28	24	21	19	15
Timpson	63.9	52	43	35	33	27	29	25	22	20	15
Garrison	72.3	56	47	39	36	30	32	28	24	21	15
Appleby	83.3	61	52	43	39	34	36	32	25	21	15
Nacogdoches	92.4	66	57	48	43	38	41	36	25	21	15
Angelina	104.3	68	58	50	47	40	44	37	27	22	15
Lufkin	112.5	69	59	50	47	40	44	37	29	22	15
Renova	127.6	74	65	54	52	42	45	39	31	22	18
Corrigan	137.7	77	67	54	52	42	45	39	31	22	18
Moscow	143.2	82	71	54	52	42	45	39	31	22	18
Valda	147.0	84	71	54	52	42	45	39	31	22	18
Leggett	151.0	84	71	54	52	42	45	39	31	22	18
Livingston	159.2	85	71	54	52	42	45	39	31	22	18
Goodrich	167.3	85	71	54	52	42	45	39	31	22	18
Shepherd	175.4	85	71	54	52	42	45	39	31	22	18
Cleveland	187.5	85	71	54	52	42	45	39	31	22	18
Midline	194.2	85	71	54	52	42	45	39	31	22	18
New Caney	203.4	85	71	54	52	42	45	39	31	22	18
Pauli	208.8	85	71	54	52	42	45	39	31	22	18
Humble	213.6	85	71	54	52	42	45	39	31	22	18
Houston	230.7	85	71	54	52	42	45	39	31	22	18

Note 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.

Note 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.

Note 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

EXHIBIT 2.

Comparison of Rates Paid by Wholesale Grocers at Shreveport and by Their Texas Competitors to Common Destinations.

From—	To—	Dist. Miles.	Sugar, Cents.	Flour, Cents.	Grain, Cents.	Hay, Cents.	Canned Goods, Cents.	Lard com- pounds, Cents.	Green coffee, Cents.	Bag- ging, Cents.	Ties, Cents.	Bagging and ties; carload, Cents.	Ex- tracts, Cents.	Cheese, Cents.
Nacogdoches.....	Joaquin	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	27.0	25.0
Shreveport.....	...do.	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	40.0	28.0
Nacogdoches.....	Tenaha	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	23.0	21.0
Shreveport.....	...do.	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	34.0	31.0	24.5	51.0	42.0
Nacogdoches.....	Timpson	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport.....	...do.	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	52.0	43.0
Nacogdoches.....	Center	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	35.0	32.0
Longview.....	...do.	67.8	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport.....	...do.	67.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Longview.....	Backville	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport.....	...do.	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Marshall.....	Elysian Fields...	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport.....	...do.	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0	92.0
Texarkana.....	Marshall	66.7	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport.....	...do.	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Texarkana.....	Jefferson	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	28.0	26.0
Marshall.....	...do.	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport.....	...do.	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	56.0	42.0
Longview.....	San Augustine...	87.2	37.0	32.5	29.5	27.0	37.0	37.0	37.0	37.0	37.0	18.0	48.0	44.0
Nacogdoches.....	...do.	69.1	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	42.0	38.0
Beaumont.....	...do.	120.5	38.0	29.0	26.5	25.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0	47.0
Shreveport.....	...do.	85.0	39.0	39.0	39.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	61.0	52.0
Pittsburg.....	Avinger	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	21.0	19.0
Shreveport.....	...do.	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	64.0	51.0
Texarkana.....	Atlanta	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	18.0	16.0
Shreveport.....	...do.	60.8	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Marshall.....	Waskom	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	17.0	16.0
Shreveport.....	...do.	20.8	23.0	23.0	23.0	25.0	23.0	23.0	23.0	25.0	23.0	16.0	37.0	32.0

EXHIBIT 3.

Comparison of Rates Paid by Wholesale Saddlery and Vehicle Dealers at Shreveport and by Their Texas Competitors at Common Destination.

From—	To—	Distance, Miles.	Wag- ons. Cts.	Bug- gies. Cts.	Sad- dles. Cts.	Har- ness. Cts.	Horse col- lars. Cts.	Leath- er. Cts.
Dallas.....	Jonesville	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport....	...do.	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas.....	Marshall	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport....	...do.	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas.....	Elysian Fields.	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport....	...do.	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas.....	Tencha	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport....	...do.	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas.....	Joaquin	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport....	...do.	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of Rates Paid by Furniture and Stationery Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Dis- tance, Miles.	Sta- tion- ery. Cts.	Docu- ment files, k d. Cts.	Sales books, cash ships. Cts.	Talking ma- chines records. Cts.	Iron parts, office chairs. Cts.	Furni- ture, new, c. l. Cts.
Dallas.....	Nacogdoches ..	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston.....	...do.	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport....	...do.	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas.....	Tyler	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston.....	...do.	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport....	...do.	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas.....	San Augustine.	211.9	80.0	72.0	60.0	80.0	58.0	46.0
Galveston.....	...do.	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport....	...do.	85.0	61.0	52.0	43.0	61.0	39.0	36.0
Dallas.....	Longview	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston.....	...do.	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport....	...do.	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Pittsburgh ...	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston.....	...do.	320.9	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	...do.	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas.....	Clarksville ...	130.8	61.0	56.0	40.8	61.0	48.0	28.8
Galveston.....	...do.	392.3	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	...do.	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas.....	Carthage	160.6	69.0	63.0	57.0	69.0	54.0	40.0
Galveston.....	...do.	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport....	...do.	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Mineola	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston.....	...do.	288.4	86.0	77.0	65.0	86.0	61.0	48.0
Shreveport....	...do.	111.5	79.0	64.0	58.0	79.0	55.0	48.0

EXHIBIT 4.

General Tariff of Class Rates, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.

The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

Section 1.—Table of Rates.

(Rates, in cents per 100 pounds to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in Sections 2, 3, and 4, of this tariff.)

Distances, miles	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
10 and less.....	13	12	10	8	6	7	6	5	5	4
12 and over 10.....	14	12	11	9	6	7	6	5	5	4
15 and over 12.....	15	13	12	10	7	8	6	5	5	4
18 and over 15.....	16	14	12	10	8	9	7	6	5	5
21 and over 18.....	17	15	13	11	9	10	8	6	6	5
24 and over 21.....	18	16	14	12	10	11	9	7	6	5
27 and over 24.....	19	17	15	13	11	12	10	8	7	6
30 and over 27.....	20	18	16	14	12	13	11	9	7	6
33 and over 30.....	21	19	17	15	13	14	12	10	8	6
36 and over 33.....	22	20	18	16	14	15	13	10	8	7
39 and over 36.....	23	21	19	17	15	16	14	11	9	7
42 and over 39.....	24	22	20	18	16	17	14	11	9	7
45 and over 42.....	25	23	21	19	17	18	15	12	10	8
48 and over 45.....	26	24	22	20	17	18	15	12	10	8
51 and over 48.....	27	25	23	21	18	19	16	13	11	8
54 and over 51.....	28	26	24	22	18	19	16	13	11	9
57 and over 54.....	29	27	25	23	19	20	17	14	12	9
60 and over 57.....	30	28	26	24	19	20	17	14	12	9
63 and over 60.....	31	28	26	24	20	21	18	15	13	10
66 and over 63.....	32	29	27	25	20	21	18	15	13	10
69 and over 66.....	33	30	28	26	21	22	19	16	13	10
72 and over 69.....	34	31	29	27	21	22	19	16	13	10
75 and over 72.....	35	32	30	28	22	23	20	17	14	11
78 and over 75.....	36	33	31	29	22	23	20	17	14	11
81 and over 78.....	37	34	32	30	23	24	21	18	14	11
84 and over 81.....	38	35	33	30	23	24	21	18	14	11
87 and over 84.....	39	36	34	31	24	25	22	19	15	12
90 and over 87.....	40	37	35	32	24	25	22	19	15	12
93 and over 90.....	41	38	35	32	25	26	23	20	16	13
96 and over 93.....	42	39	36	33	25	26	23	20	16	13
99 and over 96.....	43	40	37	34	26	27	24	21	16	13
102 and over 99.....	44	41	38	35	26	27	24	21	16	13
105 and over 102.....	45	42	39	36	27	28	25	22	17	14
108 and over 105.....	46	43	40	37	27	28	25	22	17	14
111 and over 108.....	47	44	40	38	28	29	26	23	17	14
114 and over 111.....	48	45	41	39	28	29	26	23	17	14
117 and over 114.....	49	46	42	40	29	30	27	24	18	15
120 and over 117.....	50	47	43	41	29	30	27	24	18	15

124 and over 120.....	51	47	43	41	30	31	28	25	18	15
128 and over 124.....	52	48	44	42	30	31	28	25	18	15
132 and over 128.....	53	49	45	43	31	32	29	25	18	15
136 and over 132.....	54	50	45	43	31	32	29	26	19	16
140 and over 136.....	55	51	46	44	32	33	30	26	19	16
144 and over 140.....	56	52	47	45	32	33	30	26	19	16

77 Distances, miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
148 and over 144.....	57	53	48	46	33	34	31	27	19	16
152 and over 148.....	58	54	49	47	33	34	31	27	19	16
156 and over 152.....	59	55	50	48	34	35	32	27	20	16
160 and over 156.....	60	56	51	49	34	35	32	28	20	16
164 and over 160.....	61	56	51	49	35	36	33	28	20	16
168 and over 164.....	62	57	51	49	35	36	33	28	20	16
172 and over 168.....	63	58	52	50	36	37	34	29	20	16
176 and over 172.....	64	59	53	51	36	37	34	29	21	16
180 and over 176.....	65	60	54	52	37	38	35	29	21	16
184 and over 180.....	66	61	55	53	37	38	35	30	21	16
188 and over 184.....	67	62	56	54	38	39	36	30	21	16
192 and over 188.....	68	63	57	55	38	39	36	30	21	16
196 and over 192.....	69	64	58	56	39	40	37	31	22	17
200 and over 196.....	70	65	58	56	39	40	37	31	22	17
205 and over 200.....	71	65	58	56	40	41	37	31	22	17
210 and over 205.....	72	66	59	57	40	41	38	32	22	17
215 and over 210.....	73	67	59	57	41	42	38	32	22	17
220 and over 215.....	74	68	59	57	41	42	38	32	22	17
225 and over 220.....	75	69	59	57	42	43	39	33	23	17
230 and over 225.....	76	70	60	58	42	43	39	33	23	17
235 and over 230.....	77	70	60	58	43	44	39	33	23	17
240 and over 235.....	78	71	60	58	43	44	40	34	23	17
245 and over 240.....	79	71	60	58	44	45	40	34	23	17
Over 245	80	72	60	58	44	46	40	34	23	17

Section 2.—Joint Rates.

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, Section 1, of this tariff, the following, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, Section 3, of this tariff.

NOTE.—The term "common-point territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

78 Exception 1 to Note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to Note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910).

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 11th Day of March, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN Railway Company of Texas, Burrs Ferry, Brownell & Chester Railway Company, Eastern Texas Railroad Company, The Texas & Pacific Railway Company, Gulf, Colorado and Santa Fe Railway Company, Houston & Shreveport Railroad Company, The Houston, East & West Texas Railway Company, Texas & New Orleans Railroad Company, The Missouri, Kansas & Texas Railway Company of Texas, Texarkana & Fort Smith Railway Company, The Kansas City Southern Railway Company, The Texas & Gulf Railway Company, Marshall & East Texas Railway Company, Timpson & Henderson Railway Company, Shreveport, Houston & Gulf Railroad Company, Texas Southeastern Railroad Company, Caro Northern Railway Company, The Nacogdoches & Southeastern Railroad Company, International & Great Northern Railroad Company, and Thomas J. Freeman, Receiver thereof; Groveton, Lufkin & Northern Railway Company, Moscow, Camden & San Augustine Railway, Jefferson & Northwestern Railway Company, The Gulf & Interstate Railway Company of Texas, The Galveston, Harrisburg & San Antonio Railway Company, Galveston, Houston & Henderson Railroad Company, The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas herein-

after mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

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On the Texas & Pacific Railway.

Class rates in cents per 100 pounds.

From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.	29	27	25	23	19	20	17	14	12	9
Longview, Tex.	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.	34	31	29	27	21	22	19	16	13	10
Camps, Tex.	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.	42	39	36	33	25	26	23	20	16	13
Crow, Tex.	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.	61	56	51	49	35	36	33	28	20	16
Forney, Tex.	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

On the Houston, East & West Texas Railway.

	Class rates in cents					100 pounds.				
	1	2	3	4	5	A	B	C	D	E
From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.	48	45	41	39	28	29	26	23	17	14
Renova, Tex.	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.	56	52	47	45	32	33	30	26	19	16
Valda, Tex.	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.	67	62	56	54	38	39	36	30	21	16
Midline, Tex.	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.	72	66	59	57	40	41	38	32	22	17
Humble, Tex.	73	67	59	57	41	42	38	32	22	17
Houston, Tex.	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its lines intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years,

substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

By the Commission:

[SEAL.]

JOHN H. MARBLE, *Secretary*.

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EXHIBIT B.

Extracts from Texas Statutes.

Art. 4562, Paragraphs 4 and 8 (R. S. 1895). May fix different rates.—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

May alter, abolish, etc.—The Commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

Art. 4564 (R. S. 1895). Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter. (Ib., Sec. 5.)

Art. 4565 (R. S. 1895). When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court, at either of its terms, and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided, that if the court be in session at the time such right of

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action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Ib., Sec. 6.)

Art. 4566 (R. S. 1895). Burden of proof.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 4571, Paragraph 3 (R. S. 1895). Duty as to through freights.—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Art. 4573 (R. S. 1895). Penalty for extortion.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

Art. 4575 (R. S. 1895). Liability under this chapter; venue.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to

85 the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation.

Art. 4576 (R. S. 1895 as amended in 1901). Penalty when not

otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for every such act of violation it shall pay to the State of Texas a penalty of not more than \$5,000.

Art. 4581-a (R. S. 1895). Emergency freight rates.—In addition to the powers conferred on the Railroad Commission of Texas by Articles 4563 and 4567 of the Revised Statutes of this state, said Commission shall have power, when deemed by it necessary, to stop or prevent interstate rate wars and injury to the business or interests of the people or railroads of this state, or in case of any other emergency, to be judged of by the Commission; and it shall be its duty, after three days' notice to the roads interested, to alter, amend or suspend any existing freight rate on any railroad in this state, or to fix freight rates where none exist.

Art. 4581-b (R. S. 1895). May apply to one or more roads or parts of roads.—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the Commission.

Art. 4581-c (R. S. 1895). Rates take effect and remain in force, etc.—Said rates, so made, shall take effect at such time, and remain in force for such length of time, as may be prescribed by the Commission.

86 Act of July 12, 1907. Power to Make Emergency Rates.—

That in addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff and to establish freight and passenger tariffs, rules and regulations for temporary use to have immediate effect where none exists.

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EXHIBIT C.

Rate Adjustment.

Portions of Texas & Pacific, St. Louis Southwestern Railway of Texas, and Missouri, Kansas & Texas Railway of Texas.

Circular No. 1178, effective September 7, 1900, and as amended by Circular No. 1531, effective February 10, 1902.

The charges for transporting shipments of the articles named in the following list, between points on the lines of railroad described below, shall be made at eighty (80) per cent. of the current rates on such articles:

Railroads upon which the adjustment of rate applies:

1. Between points on the Texas & Pacific Railway, and the Denison & Pacific Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana, Waskom and intermediate points on the Texas & Pacific Railway.

2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points on the Missouri, Kansas & Texas Railway of Texas.

3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano and Dallas, and north of and including Tyler, but not from Texarkana.

List of articles subject to the adjustment of rates.

Carload and less than carload shipments of all articles which are, in carloads, subject to fifth-class and class- A, B, C, D and E rates.

Carload and less than carload shipments of:

Agricultural implements, including hand implements, plow points and other parts of agricultural implements, rough or finished, and wagons (farm) or parts of same, rough or finished.

Axes, in boxes.

Bagging for baling cotton (less than carload only).

Candy, invoice value 10 cents or less per pound.

Canned goods, consisting of canned fruits and vegetables, canned fish, lobsters, crabs, shrimps and clams, canned soup, broth, clam juice, oyster oysters, canned syrup, jellies and preserves, in boxes, barrels or crates.

88 Cotton bale ties and buckles (carloads and less than carloads).

Cotton factory products.

Crackers.

Furniture, new, all kinds.

Glass, window, loaded in box cars.

Glassware, all kinds, except cut glassware.

Glucose, glucose syrup and grape syrup.

Iron and steel articles:

Architectural iron, including columns, pedestals, capitals, plates, saddles, door and window jambs, sills and lintels, rolled beams, angle bars and girders.

Axles, carriage or wagon.

Bolts, in boxes, barrels, casks or drums.

Bridge material, iron: merchants' iron, consisting of band, bar, boiler and plate iron and steel.

Carriage and wagon skeins and boxes in barrels, casks or kegs.

Castings, not machinery.

Chains, in bundles or casks.

Crowbars.

Fence posts.

Harrow teeth.

Hav bale ties.

Jail plate.

Kilns, lime, or parts thereof, manufactured of sheet or boiler iron,

with cast iron doors and door frames, grates and floors, K. D., crated, boxed or in bundles.

Lap rings.

Mattocks, in bundles.

Nails, cut or wire.

Nails, horse and mule shoe, in boxes or kegs.

Nuts, in boxes, barrels, casks or drums.

Picks, in bundles, barrels or casks.

Pipe, wrought, couplings and connections.

Plow steel, unfinished.

Poles, electric light or railway.

Rivets, in boxes or kegs.

Roofing, black, plain, corrugated or painted.

Sad irons, in bundles, boxes or casks.

Sash weights.

Sheet iron.

Shoes, horse or mule, in kegs.

Shutters.

89 Spikes, cut or wire.

Staples, in barrels, boxes or kegs.

Shingle bands, in bundles.

Skelp iron.

Sledges, in bundles (without handles).

Strap hinges, in barrels or kegs, invoice value $2\frac{1}{2}$ cents or less per pound.

Washers, in boxes, barrels, casks or drums.

Wire, barbed or telegraph (not copper).

Wagon tires.

Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.

Matches.

Packing house products.

Paints, dry or in oil.

Peanuts.

Rice.

Rope.

Shot.

Soap, common.

Soda, bi-carbonate of, and soda ash.

Starch.

Stoves and hollow ware, grates, fenders and baskets.

Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.

Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.

Tobacco, plug, in packages weighing less than sixty pounds each.

Trunks, empty, N. O. S.

Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.

Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

EXCEPTION.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)

(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

with cast iron doors and door frames, grates and floors, K. D., crated, boxed or in bundles.

Lap rings.

Mattocks, in bundles.

Nails, cut or wire.

Nails, horse and mule shoe, in boxes or kegs.

Nuts, in boxes, barrels, casks or drums.

Picks, in bundles, barrels or casks.

Pipe, wrought, couplings and connections.

Plow steel, unfinished.

Poles, electric light or railway.

Rivets, in boxes or kegs.

Roofing, black, plain, corrugated or painted.

Sad irons, in bundles, boxes or casks.

Sash weights.

Sheet iron.

Shoes, horse or mule, in kegs.

Shutters.

89 Spikes, cut or wire.

Staples, in barrels, boxes or kegs.

Shingle bands, in bundles.

Skelp iron.

Sledges, in bundles (without handles).

Strap hinges, in barrels or kegs, invoice value $2\frac{1}{2}$ cents or less per pound.

Washers, in boxes, barrels, casks or drums.

Wire, barbed or telegraph (not copper).

Wagon tires.

Wire rope.

NOTE.—When any of the foregoing articles are shipped together in mixed carloads they shall be charged eighty (80) per cent. of the rates prescribed in Commodity Tariff No. 17-A for the transportation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of machinery, engines and boilers for cotton gins, cotton compresses and cotton seed oil mills.

Matches.

Packing house products.

Paints, dry or in oil.

Peanuts.

Rice.

Rope.

Shot.

Soap, common.

Soda, bi-carbonate of, and soda ash.

Starch.

Stoves and hollow ware, grates, fenders and baskets.

Sugar (except lemon and maple sugar), molasses, syrup, jelly, preserves, fruit butter and mince meat.

Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.

Tobacco, plug, in packages weighing less than sixty pounds each.

Trunks, empty, N. O. S.

Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.

Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden facets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

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Journal Entry.

Proceedings of June 4, 1912.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
 vs.
 UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
 COMMISSION, Intervener.

In said cause the petitioner was granted leave to file an amended petition. Thereupon said cause was set for hearing on Wednesday, June 26, at 10:30 A. M. with No. 67.

92

In the United States Commerce Court.

No. —. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
 vs.
 UNITED STATES OF AMERICA, Respondent.

Amended Petition.

(Filed June 4, 1912.)

To the Honorable the Judges of the United States Commerce Court:

The Texas & Pacific Railway Company, a corporation duly and legally incorporated under the laws of the United States, files this its petition against the United States of America and thereupon complains and says:

I.

That petitioner is a carrier by rail engaged in the carriage of domestic commerce within the State of Texas and domestic commerce within the State of Louisiana respectively and of interstate commerce between the States of Texas and Louisiana and between the States of Texas and Louisiana and other states and territories of the United States and foreign countries and has been such carrier engaged in the carriage of such commerce during the time of all the happenings hereinafter referred to and for many years prior thereto; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioner in the conduct of interstate and foreign commerce during the time it has been conducting such business have been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioner is informed and charges, just, fair and reasonable as to all parties, places, commodities and states interested therein.

II.

That heretofore, to-wit, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against your petitioner and other carriers engaged in interstate commerce, among others the St. Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company and others, said cause being No. 3918 on the docket of said Commission, wherein they complained of your petitioner and numerous railway companies, the names of which are set forth in said petition, which is herewith referred to and prayed to be taken

94 as a part of this petition as fully as if set out at length herein and which will be filed in this cause, of an alleged discrimination in rates on various commodities and articles of commerce in said petition mentioned and set forth, as between Shreveport, Louisiana and distributing points in Texas to competitive points in the State of Texas, and for cause of discrimination alleged in said petition that the defendants named therein charged, collected and received from said distributing points in Texas to said competitive points, rates which are much less by any method of comparison than the rates exacted by defendants for the transportation of similar articles between Shreveport and the same destinations, thereby giving and creating an undue advantage in said competitive territory to the distributing points in Texas, and it being, among other things, alleged that "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas." That answers were filed to said petition by various defendants named therein, among others by your petitioner; that thereafter, by permission of the said Interstate Commerce Commission numerous pleas of intervention were filed both by shippers and commercial bodies in the State of Louisiana joining in the prayer of the complainants. That testimony was taken and arguments made in said cause, and the same was submitted to the Commission on January 16, 1912.

95

III.

That on March 11, 1912, the Interstate Commerce Commission handed down a report and order in said cause. The majority of said Commission held with and decided in favor of the complainants and the minority of the Commission dissented from such holding.

IV.

The opinion of the majority of said Interstate Commerce Commission begins by stating what had been shown to be the policy of

the Texas Commission and after quoting numerous utterances of the Railroad Commission of Texas the opinion, among other things, states:

"There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the north and east into Texas were pursuing a policy hostile to the development of that state. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas Commission sought to establish a Texas policy and to make the railroads within

that state contribute in the manner believed by her own
96 people to best subserve their own interests."

That thereafter in said opinion the Interstate Commerce Commission stated the real nature of petitioner's complaint in said cause as follows:

The Problem Raised.

"The petition of the complainants is that this Commission 'establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The opinion then states that the Interstate Commerce Commission has no power or authority to prescribe rates for intrastate transportation within the State of Texas and propounds the following question:

"Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?"

The Interstate Commerce Commission thereupon announces the conclusion that it has the power to prevent such discrimination as follows:

97 "An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for

relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rate of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce among the states against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient

answer is that when conditions arise which in the fulfillment
 98 of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead."

That thereupon the opinion announces the following conclusions:
 "We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

99

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

100 (7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers."

In accordance with said opinion and conclusions an order was entered making effective the conclusions so announced, the same to become operative on or before the 1st day of May, 1912, and to remain in force for a period of not less than two years thereafter. Concurring opinions were filed, both of which reached the conclusion that the Interstate Commerce Commission had the power to prevent discrimination against interstate rates by state

101 rates which covered a part of the line of transit of the interstate route. The three dissenting opinions announced the proposition that the Interstate Commerce Commission had no authority under the Act to Regulate Commerce or otherwise, to control state rates, or to adopt intrastate rates made under state authority as measures of interstate rates without finding that the interstate rates complained of were unreasonable and that the intra-state rates were reasonable, and that the order based upon the opinions of the

majority exceeded the powers of the Interstate Commerce Commission under the law and was therefore null and void. A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is hereto attached, marked Exhibit A and is prayed to be taken as a part hereof as fully as if set out at length herein. That thereafter on or about the 19th day of April, 1912, prior to the date when said order by its terms was to become effective, the Interstate Commerce Commission by its order, duly entered in that behalf, extended the effective date of said order to June 1, 1912. That said order by its terms is directed only against your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company, but petitioner alleges that the Missouri, Kansas & Texas Railway Company of Texas extends from the City of Dallas, in said State of Texas, to the said City of Shreveport, and likewise the St. Louis Southwestern Railway Company of Texas, in connection with its affiliated line, the St. Louis Southwestern Railway Company, extends from said City of Dallas to said City of Shreveport and each of said

companies extends to various commercial points of distribution in east Texas which are in competition with the City of

Shreveport and also with the various cities and towns situated on the lines of your petitioner and also upon the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company and by reason of competitive conditions it is necessary for these lines, both of which were parties to said cause, to adopt whatever rates are in force upon the lines of your petitioner and the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company. That the line of your petitioner extends from the City of New Orleans to El Paso, Texas, and from Marshall, Texas, to Texarkana, Texas, and from Texarkana, Texas, through cities of Sherman, Paris and other places to Ft. Worth, Texas, with various branch lines in Louisiana, making in all 1,885 miles of railroad, and connects with various other railways in the States of Texas and Louisiana and over which by through routes and joint rates it transports large quantities of interstate commerce to and from the City of Shreveport and to and from various states and territories of the United States through said city. That the City of Shreveport has a population of about 30,000 inhabitants and is situated in the northwestern part of the State of Louisiana, about 42 miles from the Texas-Louisiana state line. That it does a large jobbing business and there is tributary thereto a large territory within the State of Texas. That the City of Dallas has a population of approximately 100,000 inhabitants, and is situated in the northern part of Texas, approximately 73 miles from the Oklahoma-Texas state line and 190 miles west of the City of Shreveport, and does a large jobbing and distributing business in the territory between Dallas and Shreveport, which territory may be described as competitive territory for the jobbing interests of the two cities.

103 That the City of Houston is situated in the southeastern part of the State of Texas, has a population of approximately 110,000 inhabitants and is distant

from Shreveport approximately 231 miles. It is a large jobbing center and the territory in Texas lying between it and said City of Shreveport is competitive territory for the jobbing interests of the two cities. That the City of Dallas is connected with the City of Shreveport by the line of your petitioner and also by that of the Missouri, Kansas & Texas Railway of Texas and by the St. Louis Southwestern Railway Company of Texas in connection with its affiliated line, the St. Louis Southwestern Railway. The City of Houston is connected with said City of Shreveport by the lines of the Houston, East & West Texas Railway Company and the Houston & Shreveport Railroad Company.

V.

That in said petition of the Railroad Commission of Louisiana hereinabove referred to the rates, both class and commodity, were complained of as being unreasonable in themselves and also as discriminatory against the City of Shreveport, in that for equal distances rates from Shreveport to the said competitive territory within the State of Texas were greater than the rates from the Texas cities and particularly said cities of Houston and Dallas, it being alleged in said petition that the rates from the Texas cities to said competitive territory had been established by the Texas Commission for the purpose of protecting Texas manufacturers and wholesalers in said competitive territory against the manufacturers and wholesalers of the City of Shreveport and that the Texas Commission had so framed the rates from the Texas cities to this competitive territory as to preserve it for Texas manufacturers and jobbers and prevent the Shreveport manufacturers and jobbers from making sale of their goods and wares in this competitive territory. While the rates were alleged to be unjust and unreasonable in themselves the real contention of the Louisiana Commission in said cause was that the same effected an unjust and unlawful discrimination in favor of Texas manufacturers and jobbers as compared with the rates which were established by the Texas Commission to competitive points. That there was no substantial evidence introduced on the hearing of said cause to the effect that the rates complained of, either class or commodity, were unjust or unreasonable in and of themselves and the Interstate Commerce Commission in its report and order does not find that the several commodity rates complained of were either unjust or unreasonable in and of themselves, but does find, basing its finding solely and exclusively upon a comparison of said commodity rates from Shreveport to Texas with the commodity rates in force between points in Texas for equal distances, that said commodity rates between Shreveport and Texas were unjustly and unduly discriminatory, all of which will more fully appear from the report and order of the Commission hereinabove referred to. That the power of the Interstate Commerce Commission under the law, as petitioners, are informed and believe and, therefore, charge, was and is to find whether or not the commodity rates established by the carriers and complained of by the Louisiana Commission were in themselves unjust and unreasonable and

unless they found them so to be to continue them in force and if they found them so to be to prescribe rates in themselves just and reasonable. Your petitioners aver that the Interstate Commerce Commission has wholly failed and refused to pass upon the question of the reasonableness of the commodity rates established by the carriers and complained of in said cause and made no finding that they were in any respect unjust or unreasonable, but held that such rates discriminated against the City of Shreveport, because for equal distances they were greater than the rates established by the Railroad Commission of Texas from the Cities of Dallas and Houston and other points in Texas to apply on traffic originating at such points and destined to points within the State of Texas and wholly carried within that state, such traffic being entirely within the State of Texas and said rates being established by the Railroad Commission of Texas under circumstances hereafter set forth.

VI.

That heretofore, to-wit, on or about the 21st day of April, 1891, the legislature of the State of Texas, in pursuance of a constitutional provision duly authorizing it thereto passed an act creating the Railroad Commission of Texas with full and complete power over all intra-state railroad traffic. The said act gives the Railroad Commission of Texas power to classify freight, to fix reasonable rates for transportation of freight between points within the state, to
 106 fix different rates for different railroads, for different lines under the same management, and for different parts of the same line and to change and alter said rates. That said act likewise confers power upon the Railroad Commission of Texas to correct abuses in the management of railways and confers upon that body large and comprehensive powers in the control, management and operation of railways within that state. That since the passage of the original act hereinabove referred to, amendments and additions have been made thereto conferring upon said Commission power to make freight and passenger rates to take immediate effect or at such time as might be fixed, whenever an emergency shall arise, the sufficiency of which emergency was to be determined by said Commission and also conferring upon said Commission power temporarily to suspend existing rates. That under and by virtue of the laws so passed by the legislature of the State of Texas, the Railroad Commission of Texas has established and enforced from the time of its creation, rates, tariffs, regulations and classifications on all and every character of property what ever transported by railroads between points in the State of Texas and have enforced the observance of same. That under the provisions of said Railroad Commission Act the Railroad Commission of Texas has full power and authority to initiate and establish absolute rates. That the carriers thereunder have no right under the law to charge, demand or receive a greater or less rate than that fixed by the Railroad Commission for the carriage either of freight or passengers. That a departure from the rates so established by the Railroad Commission of Texas is made an offense punishable by severe

107 penalties; that to charge, demand or receive a greater rate than that fixed by the Commission is declared an extortion under the act punishable by fine, accruing to the State of Texas, of not less than \$500 nor more than \$5,000, and in addition to the penalties thus accruing to the State of Texas, collection of which is enforced by the order of the Railroad Commission of Texas through suits by the Attorney General of said state acting under its direction, a penalty accrues to the individual so charged or paying said excessive rate of not less than \$125 nor more than \$500. That to charge a less rate than fixed by the Commission of Texas is a violation of the order of said Commission, punishable by fine, collected as above stated, of not more than \$5,000, all of which will more fully appear from Exhibit B, hereto attached, and hereby made a part of this petition, and is prayed to be taken and considered as fully as if set out at length herein. That under said act the rates, rules, orders and regulations of the Railroad Commission of Texas cannot be collaterally assailed and are held to be conclusive unless set aside in a direct action brought for that purpose against the Railroad Commission of Texas and unless shown in such proceeding to be unjust and unreasonable by clear and satisfactory proof, which clear and satisfactory proof has been defined by the Supreme Court of the State of Texas the court of highest and ultimate jurisdiction in said state, to be proof beyond a reasonable doubt. That said Supreme Court of the State of Texas has held that the Railroad Commission of Texas has with regard to the initiation and establishment of rates all powers possessed by the railways themselves prior to the creation of said Commission. That

108 from the date of its installation under the laws aforesaid the Railroad Commission of Texas has continuously exercised the powers conferred by said act and other acts of the legislature of the State of Texas amendatory thereof and supplementary thereto in the fixing of rates within the State of Texas, for the distribution therein of the products of manufacturers and wholesalers and others within the State of Texas, and has continuously exercised the power of making emergency rates within the State of Texas when rates into that state from points beyond the state were reduced in such manner as in the judgment of the Railroad Commission of Texas injuriously affected the interests of manufacturers, wholesalers, jobbers and others within that state.

VII.

That the rates fixed by the Texas Railroad Commission on all articles and commodities complained of by the Louisiana Commission were and are unjustly low and were less than just and reasonable rates. That in order to preserve the competitive territory of northeastern Texas lying between Dallas and the Arkansas-Texas and Louisiana-Texas state lines as a territory in which Dallas and other manufacturers and merchants might overcome competition from points without the state the Railroad Commission of Texas established distance rates which were 80 per cent. of their standard

distance class rates and on a number of commodities applied the same percentage of their standard distance commodity rates over the following lines of railway: The Texas & Pacific Railway, Denison, Pacific & Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana and Waskom and intermediate points; and between points on the Missouri, Kansas & Texas Railway Company of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points; and between points on the St. Louis Southwestern Railway Company of Texas east of and including Sherman, Plano and Dallas and north of and including Tyler, but not from Texarkana; said rate adjustment being set out in Circular No. 1178 of said Railroad Commission of Texas, effective September 7, 1900, as amended by Circular No. 1531, effective February 10, 1902, which said order is attached, marked Exhibit C and made a part hereof. The said Commission gave as its reason for the installation of said special rates of 80 per cent. of the standard distance rates applicable between other points within the State of Texas, that the inbound interstate rates to Shreveport and Texarkana were so far less than the inbound interstate rates to Dallas and other Texas distributing points that said cities and distributing points were unable to compete with said cities of Texarkana and Shreveport for the business of the intermediate towns, cities and communities. Your petitioner alleges that the standard distance scale of rates of the Texas Commission on the classes and commodities involved herein for the several distances involved in the order of the Interstate Commerce Commission herein, by reason of the lack of density of traffic, and of the connection of said mileage scale of rates with the blanket or common point territory provided in the rules and regulations of the Texas Railroad Commission are unjust and unreasonable and of themselves and that said 80 per cent. of said standard rates prescribed in said circular of the Railroad Commission of Texas hereinabove referred to is inherently unreasonable and unjust.

VIII.

That your petitioner and all of the Texas carriers, including those made parties to said petition of the Railroad Commission of Louisiana, recognized that the rates established by the Railroad Commission of Texas were unjust and unreasonable and protested against the same, but notwithstanding such protest said Commission installed said rates although they were unreasonably low and non-compensatory, and your petitioner and said Texas carriers have obeyed and accepted the same for the reason that non-observance thereof would have made them and each of them liable to prosecution and extreme and severe penalties, your petitioner being advised and believing that the making of intra-state rates was within the exclusive jurisdiction of the Railroad Commission of Texas and then believing and now believing that the Interstate Commerce Commission was wholly without power, authority or jurisdiction to make such intra-state rates the legal measure of interstate rates. Your petitioner

further alleges that it accepted said rates so prescribed by the Railroad Commission of Texas for the reason that it was advised and believed that under the broad powers conferred upon the Railroad Commission of Texas it would be extremely difficult, if not wholly impossible, to set aside said rates without attacking the whole
111 body of rates established and enforced by the Railroad Commission of Texas; and your petitioner avers that the Railroad Commission of Texas asserts and by its continuous practice has indicated that it has the right under the laws of said state to so adjust rates wholly within the State of Texas as to enable cities, towns and communities within said state to successfully compete with cities, towns and communities without said state, and on information and belief petitioner alleges the fact to be that said Railroad Commission of Texas, if in its judgment it believes that the rates made by the order of the Interstate Commerce Commission herein complained of will injuriously affect the commerce of the cities and towns within the area covered by said order, will further reduce said intra-state rates in order to meet the competition created by the order herein complained of; and petitioner further avers that the order of the Interstate Commerce Commission herein complained of leaves petitioner and all other carriers affected thereby without relief in this: that the Railroad Commission of Texas continuously reduces the intra-state rates in order to meet the interstate competition, whereupon the Interstate Commerce Commission reduces the interstate rates for the purpose of meeting the intra-state competition whereby your petitioner and the other carriers affected must suffer the continuous reduction of rates not justified by proof or finding that the rates so reduced are unjust or unreasonable in and of themselves; that your petitioner being wholly without power to raise the intra-state rates so adopted by the Interstate Commerce Commission as a legal measure of the justness of the interstate rates is wholly without remedy in the premises.

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D.

That said order of the Interstate Commerce Commission herein complained of provides that your petitioner shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance; that the State of Texas has a classification of its own in which many articles are differently classed from the classification provided in the Western Classification and in the great majority of instances carload minima in said Texas Classification are much less than in Western Classification and the mixtures are different under the Texas Classification, a jobber being able to substantially make his own mixture of any kind of freight, the result being that movement of freight under the Texas Classification is far more onerous upon the carriers than the movement of freight under the Western Classification and the rates received for carrying any given item of traffic returning less revenue to the carriers than if carried under Western Classification; that the Interstate Commerce Commission adopts the

Western Classification in regard to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, but under the order of said Commission herein complained of your petitioner and all other carriers affected thereby, in applying to traffic moving out of Shreveport the rates established by

the said order, will be compelled to adopt the Texas Classification, so that by the establishment of said rates the Interstate Commerce Commission has discriminated against your petitioner and other carriers affected thereby; that except as to Shreveport on interstate traffic moving from Western Classification territory into other parts of Texas the Western Classification will control. Said Western Classification has been adopted by the Louisiana Commission applying to freight moving from one point in the State of Louisiana to another point in the State of Louisiana, so that the order of the Interstate Commerce Commission discriminates in favor of Shreveport in Louisiana and works an unjust and unlawful discrimination against carriers handling the Shreveport traffic destined to Texas.

X.

Your petitioner shows that there is a large traffic in the articles and commodities mentioned and described in said order of said Interstate Commerce Commission made in said case No. 3918 transported by petitioner from points outside of Texas through Shreveport and by your petitioner from distributing points in Texas to that portion of the territory covered by said order, for which transportation your petitioner now receives and has received a large revenue in the way of freight charges; that the order so promulgated by said Interstate Commerce Commission will materially reduce the receipts of your petitioner from such transportation. Petitioner on information and belief avers the facts to be that the rates on a large amount of traffic in the territory along and adjacent to the Mississippi River are exceedingly low by reason of the fact that such traffic can be and is transported by water over said river and its tributaries and over the Gulf of Mexico and the waters with which it connects; that this is especially true with reference to interstate freight traffic; that the town of Shreveport, Louisiana, is situated on the Red River, which is a tributary of the Mississippi River, and is nearer the Mississippi River than the Texas distributing points referred to in said cause No. 3918, and that Shreveport is connected with the Mississippi River by several lines and roads of railway and is accorded lower rates on inbound freight by reason of its location as aforesaid than are accorded to distributing points in Texas mentioned and described in said cause No. 3918 and in the order made in said cause, and that, therefore, the City of Shreveport and the territory adjacent thereto receive and have the benefit of these lower rates, and that the interests in whose behalf the complaint was made in said cause No. 3918, and for whose benefit the order was entered therein, have and receive the benefits of the lower rates on freight traffic aforesaid, and that when such rates are added to the outbound rates from Shreveport it will be found, as your petitioner is informed

and believe, and on such information and belief alleges the facts so to be, that the total transportation charge on the commodities and classes mentioned and described in said order, under existing rates, to the territory mentioned and described therein, handled by the said interests at Shreveport, will not be materially higher than the total transportation charge will be on the same commodity handled into the same territory from the distributing points in Texas directly affected by said order. Your petitioner is informed and believes, and on such information and belief alleges the facts to be, that in most instances the total transportation charges are less. Your petitioner is further informed and believes, and on such information and belief alleges the facts to be, that if said order of the Interstate Commerce Commission herein complained of is enforced that on the great volume of the freight traffic referred to by said order the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and will be much lower than the total transportation charges on freight traffic which moves into and out of the Texas distributing points to the said territory; that thereby a large amount of freight traffic now handled by your petitioner from Texas distributing points to said territory and from points outside of Texas other than Shreveport will be transferred to the business men of Shreveport from the distributing points in Texas aforesaid and from the distributing points outside of Texas other than Shreveport, and that in consequence thereof it will entail upon your petitioner large and substantial losses in freight revenue as is hereinafter more specifically set out.

Petitioner further shows that by reason of the provisions of the laws regulating interstate commerce, and especially the provisions of Section 4 of the said act as amended, and natural and competitive conditions as to water rates, rail rates and commercial competition, that the material reductions made from Shreveport to Texas points mentioned and described in said order will necessarily disturb and reduce freight rate conditions over a very large scope of territory; that your petitioner and other interested lines of railway have always heretofore tried to adjust fairly, justly and reasonably the interstate rates to and from all points in the Southwest so as to prevent unreasonable discriminations and unduly prejudicial conditions in any part of said southwestern territory; that a large proportion of the classes and commodities on which material reductions are made by such order of said Interstate Commerce Commission in said cause No. 3918 are transported into southwestern territory through various gateways leading thereto, such as Chicago, Kansas City, St. Louis, Little Rock, Memphis, Vicksburg, Shreveport, New Orleans, Galveston, and other minor gateways; that the material reductions made by said order on a portion of the line over one of the main channels leading to and from the low rates on the Mississippi River will of necessity produce a reduction in the transportation charges from many of the other gateways; that for many years rates from all defined territories into southwestern territory, including territory affected by the order in question, have been based on St.

Louis, the rates from defined territories being made by adding or deducting certain differentials to or from the St. Louis rate; that the rates from Shreveport have always been a differential under the St. Louis rate; that if said rate is further reduced as is compelled by the order herein complained of, said reduction will of necessity force reductions in rates from St. Louis and the defined territories hereinabove referred to, or the great bulk of said business will flow through Shreveport and traffic flowing in through the other gateways above referred to will be greatly and materially reduced. Your petitioner

therefore avers that said order of the Interstate Commerce Commission will effect a reduction in rates on practically all the classes and commodities described in said order to the entire State of Texas, and will effect a reduction in rates thereon to points in many other states in the Southwest and to the Republic of Mexico, all of which reductions in rates will result in a reduction in revenue of your petitioner and the other carriers affected thereby.

XI.

Your petitioner alleges that if said order becomes effective the reduction in the annual revenues of your petitioner will be approximately \$812,700.00, most of which will result from the reduction of the commodity rates.

(Leave to amend granted in open Court June 27, 1912.)

Your petitioner alleges that the aggregate, actual, present value of its properties and as shown by its books is not less than \$95,802,800.00; that the net earnings of your petitioner for the year ending June 30, 1911, after deducting interest on a portion of its bonded debt of \$55,053,352.00 were \$992,844.03, and that based upon its earnings and expenses from July 1, 1911, to February 1, 1912, petitioner is informed and believes, and on such information and belief allege- the fact to be, that its net earnings, after deducting the interest on bonded debt as aforesaid, will not exceed \$854,524.12. Your petitioner therefore avers that the reductions made by the order herein complained of will not permit it to earn a reasonable or just return upon the value of its properties as alleged, and will amount to a confiscation thereof, and will operate to deprive it of its property without due process of law.

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XII.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, this petitioner says:

(1) That the order of the Interstate Commerce Commission made in said cause No. 3918 fixing commodity rates upon the lines of your petitioner was made without power or authority either directly or indirectly conferred upon the Interstate Commerce Commission, because your petitioner says that, while under subdivision 3 of Section 8 of Article 1 of the Constitution of the United States the Congress of the United States has power "to regulate commerce with foreign nations, among the several states and with the Indian tribes," the tenth amendment of the Constitution of the United States pro-

vides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," and petitioner says that, while by said provisions power was conferred upon Congress to regulate interstate and foreign commerce and commerce with the Indian tribes, no power was conferred to regulate or interfere with intrastate commerce, and that this lack of power was fully recognized in the Act to Regulate Interstate Commerce as originally enacted and subsequently amended.

That by the first section of the Act to Regulate Commerce, it is provided "that the provisions of this Act shall apply to any corporation, * * * to any common carrier, or carriers, engaged

119 in the transportation of passengers or property wholly by railroad, * * * from one state or territory of the United States, * * *

United States, * * * or from any place in the United States

to an adjacent foreign country, etc." Your petitioner avers that

this provision means that all the provisions in this Act to Regulate

Commerce are limited to the commerce mentioned in this section,

and respectfully show- that this is made more evident by the proviso

which is added to the first section, which declares "That the provisions

of this Act shall not apply to the transportation of passengers

or property * * * wholly within one state, etc."; whereby it

is provided, as your petitioner avers that none of the provisions,

including the provision against discrimination, shall apply in any

manner whatsoever to the transportation of property wholly within

one state, and that when said Act was so amended as to confer upon

the Interstate Commerce Commission power, after finding that any

rates or charges, classifications, regulations or practices whatsoever,

were unjust and unreasonable, or unjustly discriminatory or un-

120 duly prejudicial or preferential, or otherwise in violation of any

provision of the Act to prescribe what would be just and reasonable,

individual or joint rate, or rates, classifications, regulations or

practices to be thereafter followed, that no power or authority was

thereby conferred upon the Interstate Commerce Commission, or

attempted to be conferred upon the Interstate Commerce Commission

to in any way prescribe rates, regulations or practices to be observed

by common carriers with reference to transportation of property

wholly within one state; and your petitioner avers that it

120 is informed and believes, and charges the fact to be, that the

order made by said Interstate Commerce Commission in said

cause 3918, fixing commodity rates upon lines of your petitioner,

was made without authority or power vested in said Commission

to make the same, and is in violation of the Act to Regulate Com-

merce and the amendments thereof, and of the provisions of the

Constitution of the United States, as hereinbefore set forth, and is

therefore void.

(2) That said order of said Interstate Commerce Commission is,

for the reasons hereinbefore set forth, unreasonable and unjust

and, as no power or authority is conferred upon the Interstate Com-

merce Commission to make or promulgate or enforce any order that

is unreasonable or unjust, said order is therefore void.

(3) Said order, in so far as same undertakes to fix and direct the installation of commodity rates upon the lines of your petitioner, is invalid and void for the reason that there was no evidence before said Interstate Commerce Commission that the commodity rates complained of were unjust or unreasonable in and of themselves, and the order of said Interstate Commerce Commission wholly fails to find that said rates were unreasonable in and of themselves, and wholly fails to find that the commodity rates directed by the said commission to be installed by your petitioner are reasonable within themselves, nor was there any evidence before the Interstate Commerce Commission by which said Commission could find that the rates so ordered to be installed were just or reasonable within themselves.

(4) That, for the reasons hereinbefore set forth, said order
121 of said Interstate Commerce Commission deprives petitioner, of its property without due process of law and is the taking of private property for public use without just compensation in violation of the fifth amendment of the Constitution of the United States, and is therefore void.

XIII.

Petitioner says that, as hereinbefore alleged, said order of the Interstate Commerce Commission becomes effective by its terms on the 1st day of June, 1912, and that if petitioner is compelled to install and enforce the rates therein provided for, it will suffer irreparable damage.

Wherefore, your petitioner prays that due service of this petition be made on respondent herein, commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, and that on such final hearing the said order of said Commission of date March 11, 1912, be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking
122 any steps or instituting any proceedings for the enforcement thereof; that said rates so established by the Commission be declared to be unjust and unreasonable; and petitioner prays for general and special relief as the equities of the case may warrant.

HENRY G. HERBEL,

Solicitor for Petitioner.

123 STATE OF TEXAS,
County of Dallas, ss:

I, E. L. Sargent state upon oath that I am the General Fr't Agent of the Texas & Pacific Railway Company, petitioner in the above

entitled and numbered cause, and as such am authorized to make this affidavit; that all allegations of fact set forth in said petition are true, and where alleged upon information and belief I believe them to be true.

(Signed)

E. L. SARGENT.

Sworn and subscribed by the said E. L. Sargent before me, the undersigned authority, this the 14th day of May, A. D. 1912.

[NOTARIAL SEAL.]

(Signed) E. M. BECKWITH,
Notary Public, Dallas County, Texas.

My commission expires June 1, 1913.

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EXHIBIT A.

Opinion No. 1813.

Before the Interstate Commerce Commission.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Con-
stituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Decided March 11, 1912.

Report and Order of the Commission.

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No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Con-
stituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers; Held,

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway, are unreasonable, and reasonable rates are prescribed for the future.
2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and

desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a state, by the exercise of its lawful power, establishes rate which the interstate carrier makes effective upon state traffic, that carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate carrier may discriminate against interstate commerce because of the order of a state commission would be to admit that a state may limit and prescribe the flow of commerce between the states.
4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a state commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the state, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of state lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the national government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.
5. That the provision in section 1 that the act shall not apply to commerce wholly within a state was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a state and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states and thus violate the express prohibition of the act against discrimination affecting interstate commerce.
6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtain in this connection at Texas points on defendant's lines under like condition.

Walter Guion, R. G. Pleasant, W. M. Barrow, J. J. Meredith, George T. Atkins, Jr., and Luther M. Walter for complainants.

Baker, Botts, Parker & Garwood, H. A. Scandrett, and F. C. Dillard for Houston & Shreveport Railway Company and Houston, East & West Texas Railway Company.

S. H. West, E. B. Perkins, Hiram Glass, W. F. Murray, and Roy F. Britton for St. Louis Southwestern Railway Company; St. Louis

Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

127 A. S. Coke, A. H. McKnight, and J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; and Gulf & Interstate Railway Company.

T. J. Freeman, H. G. Herbel, and N. M. Leach for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

John A. Smith for New Orleans Cotton Exchange and New Orleans Board of Trade, interveners.

C. W. Hayward for New Orleans Board of Trade, Limited, and Wholesale Grocers' Association of New Orleans, interveners.

H. H. Haines for Galveston Commercial Association, interveners.

R. B. Walker for Jefferson, Tex., interests, interveners.

T. L. Torrans for Torrans Manufacturing Company, intervener.

J. T. Webster for cotton shipping interests of Pittsburg, Tex., interveners.

Leo Krouse for Texarkana Board of Trade, intervener.

E. W. Anderson for Monroe Progressive League, intervener.

E. S. Hicks for Tenaha, Tex., interests, interveners.

E. H. Carter and J. L. Williams for east Texas shippers, interveners.

W. R. Crawford for Shelby county, Tex., interests, interveners.

H. C. Wiley for Garrison, Tex., interests, interveners.

J. L. Chadswick for Penola county, Tex., interests, interveners.

Report of the Commission.

LANE, *Commissioner*:

This proceeding places in issue the right of interstate carriers to discriminate in favor of state traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation reference is made to the appendix of this report.

128 The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that state for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas, and (2) To end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas state traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that

they are compelled by the railroad commission of Texas to effect the discrimination here involved.

Policy of the Texas Commission.

The railroad commission of Texas, while not made a party to this proceeding, was notified of the hearing but was not represented thereat. The position which it takes, however, appears from the following letter which was incorporated in the record:

"AUSTIN, TEXAS, *September 12, 1911.*

Mr. H. B. Pitts, Sec'y Progressive League, Marshall, Texas.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th inst. with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas
129 points would tend to counteract the effect of the commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours respectfully,

ALLISON MAYFIELD,

Chairman."

This letter supports on the one hand the theory of the Louisiana Commission that the Texas Commission is acting in loco parentis to the jobbing interests of Texas, and on the other hand supports the theory of some of the carriers justifying the higher local rates out of Shreveport upon the ground that the through rate from point of origin in the north and east to Texas, when made up of the rate to Shreveport plus the local out of Shreveport, is not unreasonable. (See appendix.)

This latter contention has been made before the Commission at various times, and we have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low

inbound rates. See *Commercial Club of Omaha v. C., R. I. & P. Ry. Co.*, 6 I. C. C. 675; *Daniels v. C., R. I. & P. Ry. Co.*, 6 I. C. C. 458; *Eau Claire Board of Trade case*, 5 I. C. C., 293; *Savannah Bureau of Freight & Transportation case*, 8 I. C. C., 377.

It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or expand it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it never should have been established and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads when unhampered by restrictive

law attempted successfully to prescribe and define the channels of commerce in such way as to favor certain localities, industries, and individuals. By the institution of this act Congress substituted for the regulation of trade by common carriers the regulation of common carriers by the government in accordance with certain prescribed rules to be applied as to ascertained conditions. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the Commission exercised to correct any wrong which may exist in this situation.

There appears to be little question as to the policy of the Texas commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that commission, which are quoted at length in the record, evidences that the Texas commission believed that the interstate carriers operating from the north and the east into Texas were pursuing a policy hostile to the development of that state. The Texas commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other states and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind the Texas commission sought to establish a Texas policy and to make the railroads within that state contribute in the manner believed by her own people to best

subserve their own interests. Accordingly we find in the fifth annual report of that commission (page 5) the following:

"To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the state a desirable population and furnishing employment to persons already in our midst and enhancing the taxable values of the state, and, as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in

131 such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his state. Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing. * * * This commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders."

It was apparently not the prime desire of the Texas commission that rates within the state should be low, but rather that the interstate roads should not make rates so low upon commodities which Texas could supply to herself as could hinder the growth of her cities as manufacturing and distributing centers.

"This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments this commission would do all in its power by its rates to secure them reasonable revenue on their railroad investments in this state, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates." (Fourth annual report, page 19.)

Again we find the thought expressed in the letter from the chairman of the Texas state commission, quoted above, expressed in the report of that commission for 1896 (page 10), wherein it is said:

"The commission did not feel disposed when it gave the notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory even though to do so would necessitate an increase in rates; yet as a condition precedent to anything like a general increase in state rates the commission was and is determined that the railroad companies shall show that they received reasonable compensation for

transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed simply as roads operating in the state, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less-than-carload quantities among the retailers. As the freight charges they receive on local less-than-carload shipments in the state added to what they receive in the division of through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of through rates on less-than-carload shipments from a jobber outside the state to a retailer in the state; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises, the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interest of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this commission to compel the other lines to act justly toward Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment."

Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission. If interstate carriers were determined upon a long-haul policy which tended to make the people of Texas dependent upon the merchants and the manufacturers of other states the Texas commission frankly declared that it would meet this policy in such way as to save the interests of Texas from being at the mercy of these interstate carriers. At the time when these reports were written, from which quotation has been made, it is to be noted that the Interstate Commerce Commission lacked the powers which it now has; rates were unstable, competition was intense by means of rebates, and it is not unfair to say that there was no system of rate-making into the southwest upon which the Texas commission could rely. That interstate rates from northern points are not now so low as to cause the Texas commission to indulge the fears which possessed it in earlier years is made manifest by the fact that it sought before this Commission within two years the reduction of class rates from St. Louis. See *R. R. Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C. 463. This was a proceeding in the interest of the consumers and not primarily for the protection of jobbing interests.

That Texas, however, has not abandoned her purpose to retain so much of her trade within her own state as is possible is evidenced by what is known as the Texarkana rate adjustment. See Nineteenth Annual Report, R. R. Commission of Texas, page 263. By this adjustment the normal scale of rates applying upon a large number of articles, including carload and less-than-carload shipments of all articles which are, in carloads, subject to fifth class and class A, B, C, D, and E rates, was reduced by 20 per cent: 1. Between points on the Texas & Pacific Railway and the Denison & Pacific Suburban Railway east of and including Denison, Sherman, and Dallas, but not from Texarkana, Waskom, and intermediate points on the Texas & Pacific Railway. 2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom, and intermediate points on the Missouri, Kansas & Texas Railway of Texas. 3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano, and Dallas, and north of and including Tyler, but not from Texarkana.

Then follows this significant language:

"Ruling.—Rates provided in this adjustment are not available on shipments to or from Texarkana."

Thus the interior cities of Texas were protected against what was doubtless deemed the unfair competition of Texarkana, a border city, and other similarly situated points.

One illustration of the policy pursued by the Texas commission by which it is claimed advantage is given to Texas cities as against Shreveport is in the matter of the concentration of cotton. We are asked to establish concentration rules at Shreveport upon Texas cotton. The record discloses extensive correspondence upon this question between the railroads and the Texas commission, a portion of which is here given.

"The Honorable Railroad Commission of Texas, Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

134 We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the railroad commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours truly,

J. R. CHRISTIAN, *G. F. A.*"

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian as follows:

"Referring to your letter of September 15th, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission."

The policy of the Texas commission is, moreover, not without opposition within that state. Galveston, which enjoys low water rates, claims that for this reason she is the object of discrimination, a differential having been placed against distribution from that city. The Galveston Commercial Association has brought suit against the Texas railroad commission complaining of this condition. In that suit Galveston has been successful in the lower court, and it was stated at the hearing in this case that if the Supreme Court sustained the lower court it would probably mean a complete readjustment of rates in Texas; that, in fact, it would be necessary for the Texas railroad commission to make its tariffs upon an entirely different plan, and that the railroads would be prepared to suggest new tariffs to the Texas commission which would alter the relation, not only between Galveston and other Texas cities, but between Shreveport and Texas cities.

The Problem Raised.

The petition of the complainants is that this Commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

135 With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a state-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect state-made rates upon state traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a state commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing then to the question of discrimination, has this Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce dis-

criminate against a city beyond the border of a state by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining state?

This is an appeal to the powers lodged in this Commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual system of government. Congress asserts its exclusive dominion over interstate commerce; the state asserts its absolute control over state commerce. The state for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon state traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the state, and interstate commerce suffers a corresponding disadvantage. May this Commission end such discrimination by saying to the interstate carrier: "You may not distinguish between state and interstate traffic transported under similar conditions. If the rates prescribed for you by state authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the state, to so adjust your rates that justice will be done between communities regardless of the invisible state line which divides
136 them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the national government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce touching discrimination.

Power and Policy of Congress.

The theory of our constitution is that a state may not live unto itself alone, either politically or commercially. Under the articles of confederation the several states reserved to themselves certain powers which in their exercise made necessary "a more perfect union." This was established under the constitution, in which, as an outgrowth of experience, it was provided that Congress should have the power "to regulate commerce with foreign nations and among the several states." It is unnecessary to trace the growth and expansion of the national power under this provision of the organic law. With almost each decade some problem has arisen which has brought from the Supreme Court of the United States a fuller interpretation of this power granted to Congress, and underneath each one of these decisions may be found the fundamental doctrine of governmental necessity. The power granted to regulate a commerce by wagon and the sailing ship has been found adequate for the necessities of a national life to which the railway and the telegraph are essential. Under the protection and authority of the federal government our commerce has known no state lines, we have enjoyed freedom of trade between the people of the various states, and our railroad systems have been constructed to convey a national

commerce. While chartered by the states they have become the interstate highways of the United States. They are the roads of the whole people and not of any part or section of the people. Congress has commanded that all carriers which engage in interstate commerce shall be linked together as through routes; that they shall provide reasonable facilities for operating such routes; that they shall establish and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations, or practices may be prescribed (section 1); that they shall construct switch connections with any lateral, branch line of railroad, or the private sidetrack of any shipper tendering interstate traffic for transportation (section 1); that they shall not discriminate between persons (section 2), or between connecting lines (section 3); that in time of war or threatened war
 137 preference shall be given to military traffic; that the books and files of such carriers shall be open to the inspection of the Federal Commission (section 20); that the Commission may have power to prescribe just and reasonable rates, classifications, regulations, and practices; fix the division of joint rates in certain cases (section 15); prescribe a uniform system of accounts and the manner of keeping the same (section 20); and that the initial carrier shall be responsible for loss or damage to property caused by it or by other carriers over whose lines such property may pass (section 20).

By all these provisions of the law, as by others, Congress has clearly manifested its purpose to unite our railroads into a national system. The law acts only on those which do an interstate business; but in the conveying of property destined from a point in one state to a point in another this brings within the control of Congress all such carriers as do not exclude themselves from participating in such traffic.

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority so far as to compel it to respect the rules for such commerce lawfully established by Congress. (Mr. Justice Harlan, Northern Securities case, 193 U. S., 197.)

While with reference to some of them (instrumentalities of commerce), which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. (Mr. Justice Field in Gloucester Ferry case, 114 U. S., 203, 204.)"

Construction of the Law.

The power of Congress being unquestioned, we find that as carriers of interstate commerce the defendants under the act (section 3) may not give any undue or unreasonable preference or advantage to any locality or any particular description of traffic in any respect whatsoever, or subject any locality, or any particular description of traffic, to any undue or unreasonable prejudice or dis-

advantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may unduly discriminate so as to prefer a point in one state as
 138 against the other? If this is the meaning of the section, the law has recognized that an interstate carrier may properly discriminate within a state as against interstate commerce. Such construction is, however, entirely inconsistent with the letter of the statute and with its purpose. A clearer and fairer, and to our minds the only reasonable reading of the law, is one which credits Congress with the intention of stopping all undue discrimination by interstate carriers. It may be said without exaggeration that it is the paramount duty of interstate carriers, under this act to avoid discrimination. The penalties placed against any course of policy leading to such result are severe. There can be no justification for granting to one locality an advantage over another not arising out of difference in transportation conditions. The orders of a state commission enforcing a discrimination against interstate commerce are not acceptable under the law.

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

No state by the exercise of, or by the refusal to exercise, any or all of its powers may substantially discriminate or directly regulate interstate commerce or the right to carry it on. (Mr. Justice McKenna in Oklahoma v. Kansas Natural Gas Co., 221 U. S., 261.)

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way: Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of
 139 these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to

regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce. (Mr. Justice Van Devanter, *Safety Appliance case*, 222 U. S., 20, 26.)"

If a state by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon state traffic, such carrier does so with the full knowledge that the federal government requires it to apply such rates under like conditions upon interstate traffic.

Language of the Act.

It is further said that the carriers within the state of Texas are protected from the provisions of the act to regulate commerce by that clause in its first section, reading:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

This language was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a state. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a state that would affect unlawfully commerce among the states. The phrase "among the several states," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally." *Mondou v. N. Y., N. H. & H. R. R. Co.*,

223 U. S., 1, decided January 15, 1912. It is not merely the
140 commerce which is confined to a single state which is state commerce, but that which "does not affect other states." The state goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that state rates shall be reasonable or that rebates upon state traffic shall be unlawful or that discrimination between localities within the state shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the state, which is recognized and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort

advantage in any respect whatsoever. Does this mean that as between two points doing interstate business the interstate carrier shall not prefer one over the other, but that as between a point in one state and a point in another state the interstate carrier may un-

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"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. (Mr. Chief Justice White, Pullman Company case, 216 U. S., 65.)

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But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the state of Louisiana from doing business upon equal terms with the cities in Texas is to distort

the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a state commission is to admit that a state may limit and prescribe the flow of commerce between the states.

And if one state may exercise its power of fixing rates so as to prefer its own communities all states may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the constitution when each state sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that state which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886 out of which grew the act to regulate commerce. "While the decisions of the United States Supreme Court," says this report, "may not perhaps afford as conclusive an answer to this question (What is interstate commerce?) as to the preceding one, we believe they indicate very clearly what the view of that
141 tribunal will be when it is called upon to more closely draw the line between that commerce which is wholly subject to state authority and that which is exclusively under the jurisdiction of Congress."

The report quotes this language from *Gibbons v. Ogden*:

"It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does *not extend to or affect other states*. (The italics are those of the report.) * * * But in regulating commerce with foreign nations the power of Congress *does not stop at the jurisdictional lines* of the several states. It would be a *very useless power* if it could not *pass those lines*. * * * If Congress has the power to regulate it, that power must be exercised *wherever the subject exists*. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state. *This principle is, if possible, still more clear when applied to commerce 'among the several states.'* * * * The power of Congress, then, whatever it may be, must be exercised *within the territorial jurisdiction* of the several states.

After quoting other decisions, the report continues:

"There has been some dispute as to the extent to which the states may go in imposing regulations upon the instrumentalities of com-

merce which may *indirectly* affect interstate commerce until Congress sees fit to prescribe a uniform plan of regulation."

Then is cited with approval language from the decision in *Hall v. De Cuir*, 95 U. S., 485, which involved an act of the state of Louisiana prohibiting discrimination by common carriers of passengers between persons of different race or color.

"The act was declared to be an interference with interstate commerce, even if construed to be limited to that part of the carriage within the state. Upon this point the court said: 'While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up to be carried without, can not but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. * * * It was to meet just such a case that the commercial clause in the constitution was adopted.'"

Again the report quotes from *Brown v. Houston*, 114 U. S., 622.

"In short, it may be laid down as the settled doctrine of this court at this day that a state can no more regulate or impede commerce among the several states than it can regulate or impede commerce with foreign nations."

The committee comes to certain conclusions which it says have been conclusively established from the decisions to which reference has been made. Among these conclusions is this:

"Commerce among the states includes the transportation of persons and property from a place in one state to a place in another state. Interstate Commerce is all commerce that concerns more states than one, and embraces all transportation which begins in one state and ends in or passes through another state."

In presenting the act to regulate commerce to the Senate the Cullom Committee said:

"The provisions of the bill are based upon theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In view of this internal evidence that Congress was not only officially aware, but that its attention had been directly called to those decisions of the Supreme Court touching upon the boundary line between federal and state control, it certainly may not be truthfully said that Congress intended that its own act should be set at naught by an interstate carrier upon the ground that the discrimination effected against interstate commerce arose out of the rates and practices in effect on commerce wholly within a state.

An interstate carrier must respect the federal law, and if it is also subjected to state law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief, nor to

143 this Commission. When the state of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. The class rates of the Texas commission within the distances here involved are not too low. This the carriers themselves do not urge. Yet they have maintained higher rates from Shreveport, the interstate point. While the Texas commission has evidenced a policy of home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the federal law which guards commerce “among the states” against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a state and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the states make such course necessary the national government must assume its constitutional right to lead.

Conclusions.

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

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On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis- tance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Dis- tance, Miles.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

145 (4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers.

PROUTY, Chairman concurring:

I entirely agree with the conclusion reached in the majority opinion and can add nothing to the argument as there stated. I do, however, wish to refer to one or two of the previous decisions of this Commission as illustrative of my views on this general subject.

This question came before the Commission in much its present form in *Reliance Textile & Dye Works v. Ry. Co.*, 13 I. C. C., 48. In that proceeding the complaint contended that rates from the mills to its dye works, combined with rates from its dye
146 works to points of consumption, were unduly high as compared with similar rates made to and from the dye works of its competitors. One of the rates complained of was that from

certain mills in South Carolina to Augusta. Since this was a state rate and under the jurisdiction of the state commission, the defendants insisted that this Commission could not predicate discrimination on a comparison between this rate and the interstate rate to the factory of the complainant. To this contention the Commission refused to assent, saying:

"To this we can not agree. The same lines participate in all these rates from the mill to the dye works of the complainant and its competitor and from these in turn to the points of consumption. When a discrimination, forbidden by the act to regulate commerce, arises from an adjustment of state and interstate rates, carriers subject to our jurisdiction and participating in the interstate rates can not escape responsibility by claiming that the discrimination is accomplished through a reduction of the state rate so long as that reduction is voluntary. They were answerable for the effect produced by the combination of rates, all of which they control.

* * * * *

This must certainly be so where the state rate is voluntarily made, and we think that the same conclusion must finally be reached where the state rate is made by state authority. A state can no more improperly prefer an industry within its borders as against an industry located without by the imposition of an improper freight rate than the Southern Railway can unduly prefer that industry in its own interest."

In that proceeding the Commission failed to find the fact of discrimination, and no order was therefore required.

In *Saunders v. Southern Express Co.*, 18 I. C. C., 415, fish rates from Mobile as compared with those from Pensacola to certain points in the state of Alabama were before us. The Southern Express Company had originally established voluntary rates, thereby creating a relation in transportation charge between the Mobile and Pensacola fish markets to interior points of consumption. The railroad commission of Alabama had established a mileage scale of express charges for the transportation of fish and some other commodities, and the application of this scale had the effect to reduce rates materially from Mobile, whereupon Pensacola complained of the discrimination.

147 There was no claim of any intent to prefer Mobile to Pensacola; the rates in question were those of the Alabama commission applicable over all lines. To hold that those rates were unduly low would be of necessity to hold that the Alabama schedule as a whole was unduly low, and there was no evidence upon which we could properly do that. Upon the other hand, it did not seem clear that the rates from Pensacola were unduly high, or certainly that rates as low as those prescribed by the Alabama commission, if applied from Pensacola, might not be unduly low.

If we made an order requiring the defendant to remove the discrimination this must apparently result in a reduction in the Pensacola rates, and I did not feel that upon the then state of the record we were justified in requiring that reduction. It was said

that the reasonableness of the rates was being contested before the Alabama commission and the course actually adopted by us was to retain the complaint upon our docket where it might be made the subject of further investigation.

The Commission might in that case have found that the circumstances of the transportation from Pensacola were the same as from Mobile and might upon that finding have ordered the carriers to remove the discrimination by putting into effect the same rates from these two points, but to comply with his order the carrier must either have reduced its Pensacola rate or have assumed the burden of showing that the Mobile rate established by the Alabama commission was unduly low. It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected.

I call attention to this case because I am still of that same opinion. While this Commission can not establish and should not attempt to establish, directly or indirectly, a state rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the state rate in comparison with the interstate rate.

In *Andy's Ridge Coal Co. v. S. Ry. Co.*, 18 I. C. C., 405, the question was presented from a somewhat different angle. The complainant was a shipper of coal from the Coal Creek field in Tennessee to Nashville, Tenn., and its complaint was that the rate made by the defendant from its mine to Nashville was too high in comparison with the rate made by the same defendant from 148 certain points in Virginia to Nashville. In preparing the report it was my own first impression that the Commission should order the defendants to desist from this discrimination, and the facts were stated in that view, but upon consideration the Commission was unanimously of the opinion that in that case we had no jurisdiction, for the reason that the rate used by the complainant was a state rate, and that the burden, therefore, was not upon interstate but rather upon state commerce.

Upon further reflection I think that this case was wrongly decided and should be overruled. The state rate is one blade and the interstate the other of these shears, and it is impossible to say which one does the cutting. In my opinion whenever an interstate carrier creates a discrimination by the maintenance of an interstate as compared with a state rate the application for relief must, of necessity, be directed to this Commission, whether the applicant desires to use the state or the interstate service.

The first section of our act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no

state commission can establish a rate which directly or indirectly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state can not by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

149 Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

Such an authority must manifestly be exercised by some one, nor is its exercise antagonistic to the interest of state shippers. It is significant that the complainant in the Andy's Ridge case was petitioning the Commission to secure him the enjoyment of a state rate, which could only be done by federal authority.

CLARK, *Commissioner*, concurring:

In indicating my assent to the conclusions reached in this case I shall not undertake to discuss the important and far-reaching questions of law that are involved and upon which, as is evidenced by the several attitudes of my colleagues, wide differences of opinion are entertained.

Under the constitution a state may not levy any tax or impost upon commerce from another state. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon traffic. Here we have one state demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another state, and an adjoining state insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that state. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the states; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through movement of the traffic from the points at which it is produced or

manufactured to final points of consumption, but apply to the re-distribution of such traffic after it has been laid down at distributing centers. A state may not obstruct a navigable waterway without the consent of the federal government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed.

Whether or not the Congress has exercised its jurisdiction in these premises and whether or not it has delegated to us power to remove such discriminations and preferences are questions which apparently can never be settled until they have been passed upon by the
 150 court that is empowered to speak the last word. In this question as between two states possessing equal rights under the constitution and equal rights to federal protection, discrimination that is unjust or preference that is undue should, I think, be abated by federal authority, and so long as there is doubt it should be resolved in favor of that course which is harmonious with the fundamental and recognized purpose of the act to regulate commerce.

CLEMENTS, *Commissioner*, dissenting:

The act to regulate commerce at once confers and specifically limits the powers of the Commission intended by Congress to be exercised by it for the correction of wrongs against which the act was aimed.

The question of authority here presented is not that of the Congress, under the constitution, but that of this Commission, under the statute; it is not what additional powers Congress could or ought to vest in the Commission, but, Has it conferred the power here sought to be exercised?

It is conceded that the effect of the order entered in this case is to control the rates on traffic moving from Dallas, Tex., to points of destination in that state. If the power here asserted exists in this Commission then every state rate can be controlled by it. All that is needed to effect this control is for the Commission, either upon complaint made or in a proceeding instituted by it, to fix the maximum rates from a point outside the state for interstate transportation to a point in the given state on the line of an interstate carrier subject to the act, and then fix what it may determine to be the just relation of rates between that particular point of destination and all other points on the same line.

Section 1 of the act contains the following provision:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory * * *."

Every other section of the act must be read and considered in the light of this limitation, and regard must be had to the substantial effect of our orders and to the recognized rule of law that what is forbidden to be done directly may not be effected indirectly.

The manifest theory of the statute is that there is a distinct field

for separate and independent state regulation, and another for federal regulation of transportation rates. It is for this Commission to exercise only the authority conferred upon it, and when a condition arises presenting wrongs which can not be corrected without additional authority, to submit the situation to Congress, as provided in the act, for consideration of additional legislation which may commend itself to them. Section 3 of the act, condemning discrimination between places as well as persons and different descriptions of traffic, can not be read independently of this restrictive proviso of section 1.

The principles involved in the line of demarcation between state and federal control of commerce, especially with respect to transportation, are of profound importance, and however comprehensive may be the authority of Congress, this Commission is not justified, in my judgment, in undertaking, by interpretation, to read out of the act an important provision, in order to meet a situation which has developed and which, as I view it, can only be reached by additional legislation.

In so far as the administration of complete justice may be defeated by independent state action, it might be the view of Congress that such result had better be borne than to adopt legislation which practically extinguishes state authority, not only in respect to rates for intrastate transportation, but to many other matters involved in the regulations and practices of carriers wherein questions of discrimination may arise.

It will be noted that the judicial utterances quoted by the majority in this case are not confined to the granting of authority by Congress to the Commission, but relate largely to the broader field of the authority of Congress itself, under the constitution.

The conclusion and order of the Commission in this case mark a new departure, in the interpretation of the statute as to the scope of its authority, from its steadfast attitude toward this fundamental question in all previous cases.

HARLAN, *Commissioner*, dissenting:

While the majority report ascribes to the Texas commission the definite policy and purpose of so adjusting the state rates out of Dallas as to make it the jobbing point for eastern Texas, to the prejudice of Shreveport, the principle underlying the ruling would also control when a state commission, without any such motive but in the normal exercise of its functions, has fixed a scale of rates for purely state traffic with an unfavorable effect on some community in an adjoining state, served by the same carrier to the same destinations. The result of the ruling when analyzed, therefore, seems to be that in fixing a rate on the interstate traffic of a carrier we thereby impose on it and upon the lawfully constituted state authorities a standard to which both must adjust their views as to what is a reasonable rate on its purely state traffic. No room is left to the state commission for the exercise of its discretion when fixing a carrier's state rates to destinations to which its in-

terstate rates also run; the only duty it may perform is carefully to ascertain and follow the measure of reasonableness fixed by this Commission for the carrier's interstate rates to those destinations.

Harmony in a carrier's charges is always desirable, and it is doubtless true that complications occasionally arise out of the differences in the rates respectively established by the state and interstate commissions on state and interstate traffic. In some way such situations should be regulated. But the exercise by this Commission of a power that so modifies the control of state commissions over state rates and requires a carrier either to put itself in an attitude of disobedience to an order of a state commission respecting its state traffic or to accept less than a reasonable compensation on its interstate traffic, manifestly ought to rest upon some clear and definite declaration of that policy by the Congress. It rests on an insecure and wholly unsatisfactory foundation for administrative purposes when it flows from a process of reasoning that is admittedly mere construction. This is particularly true when it is announced by a quasi-judicial tribunal that has no general jurisdiction but only such special and limited powers as are defined in the act creating it.

The significance of the ruling is emphasized by the fact that it reverses what has been the settled interpretation of the act by this Commission from its inception. In numerous reported cases we have disclaimed the power now asserted and have expressly construed the proviso of section 1 as excluding the right to control such a situation as is here presented. The Congress must be presumed to have known of these decisions and to have accepted that view as the national policy declared by the statute, for in repeatedly amending the act in other respects it has made no change in that regard.

I concur in general in the views expressed in the dissenting reports of Mr. Commissioner Clements and Mr. Commissioner McChord. It is therefore unnecessary to enter upon any extended discussion of my own, particularly in view of the fact that as the author of the report of the Commission in *Saunders v. Southern Express Co.*, 18 I. C. C., 415, which presented the precise question in

153 an even more direct form, I had occasion carefully to consider the extent of our powers in such a situation and to express my views at some length. State traffic as a thing in itself to be regulated under the authority of law has been reserved under the constitution to the several states. The power of the federal government to fix maximum rates on state traffic, even when conducted by an interstate carrier, is therefore a matter of no small doubt. Its power to fix minimum rates on state traffic conducted by an interstate carrier, on the general theory that such traffic ought to contribute ratably to the cost of operating a vehicle of interstate commerce in order not to become a burden upon such commerce, seems to me to be more clear. On the same general theory I think that the Congress in aid, or rather in protection, of interstate commerce may forbid discriminations by a railroad or other instrument of interstate traffic in favor of state traffic. This, however, it has not yet undertaken to do. In my judgment the language of the proviso of section 1

admits of no other reasonable construction than that the Congress intended expressly to withhold from this Commission the right, directly or indirectly, to exercise its powers with respect to state commerce or to enforce upon such traffic any of the provisions of the act.

McCHORD, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, it is not my purpose to discuss the relative powers of the state and national governments, for that would presuppose a conflict between federal and state authority, which conflict I do not concede here exists. Neither is it my purpose to argue the extent of the powers of the Congress under the constitution, but rather to confine myself to the powers which the Congress has delegated to this Commission.

The report says complainants have asked this Commission to "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances." It continues: "With this petition we can not comply unless such power has been granted under the first, third, and fifteenth sections of the act to regulate commerce." The first section provides that the rates charged by carriers for interstate transportation must be reasonable, and prohibits and declares to be unlawful all charges which are unreasonable. The third section prohibits the giving of undue or unreasonable preference or advantage to any person, locality, or particular description of traffic, or the subjection of any person, locality, or particular description of

154 traffic to undue or unreasonable prejudice or disadvantage.

Section 15 authorizes the Commission to determine and prescribe just and reasonable rates when, after full hearing upon complaint, it shall be of opinion that the existing rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial. Under the majority opinion, therefore, resort must be had to all of the enumerated powers in order to grant the relief prayed for.

The report finds that the rates out of Shreveport, La., into eastern Texas discriminate against Shreveport in favor of Texas jobbers. Without now discussing whether or not an interstate carrier may unduly favor its intrastate traffic, let us consider the situation without regard to the state line. Conceding, for the purpose of argument, that the rates from Dallas to eastern Texas discriminate in favor of Dallas as compared with the rates from Shreveport into eastern Texas, the first question that arises is: Is the discrimination voluntary? In all the reports of this Commission dealing with the question of discrimination we have invariably inquired into the reason for the discrimination to determine whether or not the same was undue, and where we have found the situation to be one over which the carrier defendant has no control we have held that the carrier was not responsible for the discrimination. Section 4 of the act does nothing more than define a particular form of discrimination, and,

from the operation of this carriers have been relieved when the discrimination, i. e., the lower rate to the farther distant point, was brought about by circumstances beyond its control. In some instances these circumstances were water competition; in others market competition, while again, it was carrier competition. The principle underlying our action in all such cases is that the carrier is not responsible for a discrimination occurring because of circumstances over which it has no control. As was said by Mr. Chief Justice White in *East Tenn., Va. & Ga. Ry. Co. v. I. C. C.*, 181 U. S., 1:

"The prohibition of section 3, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of the carriers."

In the instances where we have found the lower rate to the farther distant point or the lower rate to the preferred point to have been reasonable, and therefore have used it to measure the reason-
 155 ableness of the rate to the point not favored, we have frequently found the latter rate unreasonable and ordered its reduction, but this action was based on section 1 after the complaint under section 3 or 4 had been dismissed. In the present case the rates from Dallas to eastern Texas points are prescribed by the body lawfully constituted and duly empowered so to do—the railroad commission of Texas. If the application of these rates results in a preference to Dallas as compared with Shreveport, then the fact that the intrastate rates were established, not by the voluntary action of the carriers, but under circumstances by which they were controlled, we must find that the discrimination, so far as the carrier is concerned is not undue. In considering, a somewhat similar situation, where the Alabama railroad commission had established rates within the state of Alabama which resulted in alleged discrimination against Pensacola, Fla., the Commission in *Saunders & Co. v. Southern Express Co.*, 18 I. C. C., 421, said:

"The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuation of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates."

This the Commission refused to do, chiefly because it considered that the application of the Alabama rates from Pensacola would not be reasonable to the defendant. By this very action the Commission dismissed the case under section 3 and proceeded to consider it under section 1.

In my opinion, therefore, the charging of lower rates to a common territory for intrastate than for interstate traffic, at least where the intrastate rates are compelled, does not constitute undue discrimination. But suppose it did. Has this Commission power to correct it?

Section 3 declares it to be unlawful for any common carrier subject to the provisions of the act to unduly prefer any person, locality,

or description of traffic, or to subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage. It is specifically provided in section 1, however, "that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivery, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid." To my mind, this excludes the application of section 3 where either the traffic favored or prejudiced lies wholly within one state. Based upon judicial expressions, intrastate commerce is said by the majority to be that commerce which not only is confined to a single state, but also "does not affect other states." The word "affect" renders the application of this phrase extremely uncertain. I do not hesitate to subscribe to the theory that where intrastate commerce or anything else places a direct burden and obstruction upon interstate commerce the obstruction can be removed. The power to regulate interstate commerce is by our constitution vested in the Congress. That body, under the commerce clause of the constitution, possesses numerous powers, only a few of which it has delegated to this Commission. In deputizing this Commission to correct unreasonable and discriminatory transportation charges and practices for the interstate transportation of passengers and property as defined by the act, Congress specifically excluded from our jurisdiction that transportation which lay wholly within one state. The phrase "wholly within one state" is qualified only by "and not shipped to or from a foreign country from or to any state or territory as aforesaid." Had it been the intention of Congress to make the provisions of the interstate-commerce act applicable to transportation wholly within one state which "affects other states," it doubtless would have further qualified the proviso in section 1. The majority report tells us that Congress was fully aware of the fine distinction between interstate and intrastate commerce as laid down by the courts. It is, therefore, but fair to assume that that body knew the significance of the phrase "does not affect other states." Whether or not the Congress was so advised is immaterial in the face of the specific exemption of all transportation wholly within one state. The Congress, and not this Commission, is vested with unqualified power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." Some, but not all, of these powers have been delegated by the Congress to this Commission. If it be true that intrastate transportation of the kind here involved "affects" interstate commerce and is subject to the regulating power of the Congress, it is for that body, and not this, to do the legislating. Certainly, as the law now stands, this Commission can not grant relief under the third section, and the fact that the situation, so far as discrimination is concerned, is without remedy does not give to us power which has specifically been withheld. As we look to the act of Congress rather than to the constitution for our powers and duties, it is useless to discuss the constitutional power of Congress under the commerce clause. In my

opinion, the majority report is in effect legislation which the Congress has expressly refused to enact.

But suppose that into the proviso of section one we read the phrase "which does not affect other states," and suppose further we concede that the Texas rates "affect" other states. A point may be affected either favorably or unfavorably. Where Shreveport is prejudiced and Dallas favored, it is the opinion of the majority that this Commission can order the discrimination removed. The converse, then, must be true, and upon complaint to this Commission that the rates between Texas points discriminate against Dallas as compared with Shreveport, a like order must be issued.

It is stated "to say that interstate carriers may so discriminate because of the orders of the state commission is to admit that the state may limit and prescribe the flow of commerce between the states." Suppose the discrimination were due to an order of this Commission fixing the Shreveport rate: To say that interstate carriers might discriminate because of such order would be an equal admission that this Commission might limit and prescribe the flow of commerce between points in a state. In response to the suggestion that the federal commerce power extended to all the affairs of a railroad if any part of its business was interstate, Mr. Chief Justice White, in *Howland v. I. C. R. Co.*, 207 U. S., 463, said:

"It assumes that because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters, which from the beginning have been and must continue to be under their control as long as the Constitution endures.

It has been repeatedly held by the Supreme Court that the power of the state over intrastate commerce is as full and complete as is the power of Congress over interstate commerce. In *Sands v. Manistee River Improvement Co.*, 123 U. S., 288, the court, by Mr. Justice Field, said:

"Internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

158 The majority points out the chaotic conditions that will result if its view be not accepted. It avers that it will then be within the power of the carriers or of the states to make rates within a state which will so confine the commerce of its communities as to exclude on equal terms other communities. The adoption of the constitution was an expression of the people's aim toward co-ordination rather than conflict between the sovereignties in the discharge of their respective powers. If, as suggested, our dual plan of government has led to chaos rather than harmony in the regulation of commerce, surely the corrective power has not been lodged

with this Commission; and if not vested in the Congress, the final remedy is to be found, as said in *Taylor v. Beckham*, 178 U. S., 580, "in the august tribunal of the people which is continually sitting." But I apprehend that such a remedy will not be invoked until it has been more clearly demonstrated than has been done by the majority report that such conflict is real and not the result of misconception both of law and of fact. The Congress is able completely to regulate interstate transportation without the exercise of any control over transportation which lies wholly within a state; so, also, is this Commission, by the proper exercise of the powers which have been conferred. If the alleged preferential intrastate rates are reasonable, and if the transportation conditions from the interstate point to the common territory are similar, it follows that the interstate rates must be too high and should be reduced. But this is not because of discrimination; rather because of inherent unreasonableness. In the determination of the reasonableness of interstate rates comparisons with other rates between points in the same territory or between points in another territory where transportation conditions are similar are extremely helpful, often persuasive, and on account of the high cost, claimed by the carriers and admitted by shippers, for conducting intrastate or local business, the reasonable intrastate rate under similar transportation conditions may safely be accepted for comparative purposes. If an unreasonably low intrastate rate be prescribed by a state commission, the order would not have to be obeyed. The situation may then resolve itself into a question of whether the intrastate rate is reasonable and whether the transportation conditions as to the intrastate and interstate traffic are similar.

Much of the opinion is devoted to a discussion of the supremacy of federal over state control. To my mind, a conclusion both erroneous and unnecessary is reached, and as it is unnecessary I would not further refer to it except for the great length with which
 159 the matter has been dealt and my unwillingness to subscribe to the views therein announced. The quotation from the *Pullman* case, 216 U. S., 65, is unassailable, but it should be remembered that in that case the state of Kansas attempted to impose a tax upon all of the property, both interstate and intrastate, of the *Pullman Company*. The excerpt from *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S., 261, is quoted from *Haskell v. Cowham*, 187 Fed., 409, and was directed at the action of the state of Oklahoma in refusing to allow natural gas mined therein to be transported by pipe lines out of the state, a situation in no wise analogous to that here presented. The decision in the *Safety Appliance* case, 220 U. S., 27, has absolutely no application to the instant case. There it was in effect held that cars and locomotives are instrumentalities and vehicles of commerce moving over an interstate highway and that their proper and safe equipment was necessary to insure the transportation of interstate commerce.

The case of *Gibbons v. Ogden*, 9 Wheat., 1, dealt with the power of the state of New York to grant an exclusive charter to *Fulton* and *Livingston* to operate steamboats on its rivers. The principal contention in that case was that commerce on its rivers was subject to

state control. The Supreme Court held otherwise, but said nothing that has a direct bearing upon the extension of federal control to interstate rates in instances of the kind here involved.

The several quotations from the report of the Cullom committee are misleading if some notice be not taken of the situation existing at that time. Prior to the enactment of the law of 1887 Congress had made no attempt to regulate commerce among the states other than that by water. To-day, when we have the benefit of numerous judicial interpretations of the phrase "interstate commerce," it is surprising to note the varied opinions expressed by eminent lawyers before the committee which framed that report a quarter of a century ago. Many contended that transportation from a point in a state to a port of transshipment was subject to state control, while others placed under the jurisdiction of the state traffic carried between points in a state passing out of the state en route, and also contended that the state's control extended over the portion of any interstate transportation which lay within its domain. After discussing this situation the report continues: "It would seem that the only construction applicable under all the circumstances would be that which limits the authority of a state to that commerce which is wholly domestic or internal and gives to Congress exclusive control over the remainder."

160 The quotation from *Gibbons v. Ogden* would be more enlightening if it included the several preceding sentences, as follows: "The word 'among' means to intermingle with. A thing that is among others is intermingled with them. 'Commerce among the states' can not stop at the external boundary line of each state, but may be introduced into the interior." Both the majority opinion and the Cullom report omit the following from *Gibbons v. Ogden*:

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a state. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Further on the report quotes Judge Hammond in a case brought in the federal courts of Tennessee to test the validity of a statute enacted in that state for the regulation of railroads:

"The decisions amount, we think, only to this: Where a warehouseman or common carrier is engaged in the storage of goods or their carriage within a state, and exclusively within it, the rates of charges for such business are subject to legislative control by the state, and the fact that such legislation may indirectly and remotely affect commerce between the states does not invalidate it, because, if Congress has, by reason of this indirect and remote regulation of such local business to interstate commerce, any right to assert control over what is primarily domestic commerce, it is to be presumed, until Congress acts, that it does not intend to displace the right of the state to control its domestic commerce."

In *Ames v. U. P. R. Co.*, 64 Fed., 171, Mr. Justice Brewer, sitting in circuit, said:

161 "Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates and make them conform to the local rates prescribed by the state, but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates any more than an act of Congress prescribing interstate rates would legally work a change in local rates."

To the suggestion that the exercise of the power to end discrimination between rates within a state and rates to interstate points must lead to conflict in which the jurisdiction of one sovereignty or the others must give way, the majority answers "that when conditions arise which, in the fulfillment of its obligations and the due exercise of its granted power to regulate commerce among the states make such course necessary, the national government must assume its constitutional right to lead." Let us see whether by the finding of the majority the national government really leads. The rates prescribed as maxima to apply from Shreveport are virtually the Texas commission rates that are in effect in Texas. Subject to these maxima, Shreveport is ordered kept on a parity with Houston and Dallas, leaving it then within the power of the Texas commission to further reduce the Shreveport rates by a reduction in the present Texas scale. The national government therefore leads by following the judgment of the state government, to whom it says: "We will adopt not only your present scale of rates, but any lower scale you may see fit to establish. Your judgment has been the standard by which we have measured and fixed the maximum rates from Shreveport. If you desire to make lower rates from Shreveport into Texas you may do so by lowering the Texas scale." Of course, if in this instance we fix interstate rates by the Texas yardstick, we must fix other interstate rates by other state yardsticks, and may find ourselves incumbered with some forty-eight different rate meters, which will doubtless create a condition "more absurd and unbearable" than that which the majority opines would arise if the states remain unmolested in the exercise of their legitimate powers. But, aside from this chaos, the Supreme Court has said that the function which the majority would delegate to the state of Texas can not by a state be constitutionally exercised, because:

"The fact which vitiates the provision is that it compels the carrier to regulate, adjust, or fix his interstate rates with some reference at least to his rates within the state. [L. & N. R. R. Co. v. Eubank, 184 U. S., 41.]"

162 To prevent the conflict between sovereignties which the majority has unnecessarily and by no means conclusively discovered and attempted to remove, the Congress has wisely declared:

"That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

The majority endeavors to interpret this provision by explaining what it does not mean, but I submit that if it were not intended to cover instances of the kind with which we are here dealing its incorporation in the act to regulate commerce was wanton and unnecessary.

My position is that this Commission should confine itself within the four corners of the law of its creation, usurping neither the legislative function of the Congress nor the judicial power of the courts.

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*Appendix.***EXHIBIT 1.****Class Rates Dallas, Tex., to Points on the Texas & Pacific Ry.**

Station.	Distance. Miles.	Class.									
		1	2	3	4	5	A	B	C	D	E
		Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Orphans Home	7.4	13	12	10	8	6	7	6	5	5	4
Mesquite	12.1	15	13	12	10	7	8	6	5	5	4
Forney	20.3	17	15	13	11	9	10	8	6	6	5
Lawrence	27.8	20	18	16	14	12	13	11	9	7	6
Terrell	31.8	21	19	17	15	13	14	12	10	8	6
Elmo	38.3	23	21	19	17	15	16	14	11	9	7
Wills Point	47.4	26	24	22	20	17	18	15	12	10	8
Edgewood	54.6	29	27	25	23	19	20	17	14	12	9
Grand Saline	65.1	32	29	27	25	20	21	18	15	13	10
Mineola	78.2	37	34	32	30	23	24	21	18	14	11
Crow	89.2	40	37	35	32	24	25	22	19	15	12
Hawkins	95.7	42	39	36	33	25	26	23	20	16	13
Big Sandy	101.4	44	41	38	35	26	27	24	21	16	13
Gladewater	111.5	48	45	41	39	28	29	26	23	17	14
Camps	117.1	50	47	43	41	29	30	27	24	18	15
Willow Springs	120.6	51	47	43	41	30	31	28	25	18	15
Longview	124.0	51	47	43	41	30	31	28	25	18	15
Hallsville	134.0	54	50	45	43	31	32	29	26	19	16
Marshall	147.9	57	53	48	46	33	34	31	27	19	16
Scottsville	155.6	59	55	50	48	34	35	32	27	20	16
Jonesville	163.7	61	56	51	49	35	36	33	28	20	16
Waskom	167.0	62	57	51	49	35	36	33	28	20	16
Greenwood	172.5	101	84	74	71	54	58	51	40	28	21
Shreveport	189.7	101	84	74	71	54	58	51	40	28	21

Class Rates Shreveport, La., to Points on the Texas & Pacific Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Waskom	22.7	39	27	23	23	23	23	22	17	13	9
Jonesville	26.0	40	28	24	24	24	24	23	17	14	9
Scottsville	34.1	43	30	26	26	26	26	24	18	14	9
Marshall	42.0	56	42	35	33	30	33	30	23	19	13
Hallsville	55.2	60	46	40	35	30	35	30	25	21	15
Longview	65.7	60	49	40	35	30	35	30	25	21	17
Willow Springs	69.1	85	71	55	47	44	47	41	36	25	18
Camps	72.6	85	71	55	47	44	47	41	36	25	18
Gladewater	78.2	85	71	59	50	48	50	45	36	25	18
Big Sandy	88.3	85	71	64	50	49	50	46	36	25	18
Hawkins	94.0	85	72	66	53	49	53	46	36	25	18
Crow	100.5	95	84	67	55	49	53	46	36	25	18
Mineola	111.5	79	64	58	55	47	48	44	36	25	18
Grand Saline	124.6	98	84	67	60	49	53	46	36	25	18
Edgewood	135.1	98	84	67	60	49	53	46	36	25	18
Wills Point	142.3	98	84	67	60	49	53	46	36	25	18
Elmo	151.4	105	92	74	71	54	58	51	40	28	21
Terrell	157.9	105	92	74	71	54	58	51	40	28	21
Lawrence	161.9	105	92	74	71	54	58	51	40	28	21
Forney	169.4	105	92	74	71	54	58	51	40	28	21
Mesquite	177.6	105	92	74	71	54	58	51	40	28	21
Orphans Home	182.3	105	92	74	71	54	58	51	40	28	21
Dallas	189.7	101	84	74	71	54	58	51	40	28	21

164 Class Rates Houston, Tex., to Points on the Houston, East & West Texas Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Humble	17.1	16	14	12	10	8	9	7	6	5	5
Pauli	21.9	18	16	14	12	10	11	9	7	6	5
New Caney	28.3	20	18	16	14	12	13	11	9	7	6
Midline	36.5	23	21	19	17	15	16	14	11	9	7
Cleveland	43.2	25	23	21	19	17	18	15	12	10	8
Shepherd	55.3	29	27	25	23	19	20	17	14	12	9
Goodrich	63.4	32	29	27	25	20	21	18	15	13	10
Livingston	71.5	34	31	29	27	21	22	19	16	13	10
Leggett	79.7	37	34	32	30	23	24	21	18	14	11
Valda	83.7	38	35	33	30	23	24	21	18	14	11
Moscow	87.5	40	37	35	32	24	25	22	19	15	12
Carrigan	93.0	41	38	35	32	25	26	23	20	16	13
Renova	103.1	45	42	39	36	27	28	25	22	17	14
Lufkin	118.2	50	47	43	41	29	30	27	24	18	15
Angellina	126.4	52	48	44	42	30	31	28	25	18	15
Nacogdoches	138.3	55	51	46	44	32	33	30	26	19	16
Appleby	147.4	57	53	48	46	33	34	31	27	19	16
Garrison	158.4	60	56	51	49	34	35	32	28	20	16
Timpson	166.8	62	57	51	49	35	36	33	28	20	16
Teneha	176.4	65	60	54	52	37	38	35	29	21	16
Joaquin	187.9	67	62	56	54	38	39	36	30	21	16
Shreveport	230.7	60	50	40	30	22	25	20	17	16	15

Class Rates Shreveport, La., to Points on the Houston East & West Texas Ry.

Station.	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Joaquin	42.8	40	28	24	24	24	24	23	17	14	9
Teneha	54.3	51	42	34	31	26	28	24	21	19	15
Timpson	63.9	52	43	35	33	27	29	25	22	20	15
Garrison	72.3	56	47	39	36	30	32	28	24	21	15
Appleby	83.3	61	52	43	39	34	36	32	25	21	15
Nacogdoches	92.4	66	57	48	43	38	41	36	25	21	15
Angelina	104.3	68	58	50	47	40	44	37	27	22	15
Lufkin	112.5	69	59	50	47	40	44	37	29	22	15
Renova	127.6	74	65	54	52	42	45	39	31	22	18
Corrigan	137.7	77	67	54	52	42	45	39	31	22	18
Moscow	143.2	82	71	54	52	42	45	39	31	22	18
Valda	147.0	84	71	54	52	42	45	39	31	22	18
Leggett	151.0	84	71	54	52	42	45	39	31	22	18
Livingston	159.2	85	71	54	52	42	45	39	31	22	18
Goodrich	167.3	85	71	54	52	42	45	39	31	22	18
Shepherd	175.4	85	71	54	52	42	45	39	31	22	18
Cleveland	187.5	85	71	54	52	42	45	39	31	22	18
Midline	194.2	85	71	54	52	42	45	39	31	22	18
New Caney	203.4	85	71	54	52	42	45	39	31	22	18
Pauli	208.8	85	71	54	52	42	45	39	31	22	18
Humble	213.6	85	71	54	52	42	45	39	31	22	18
Houston	230.7	85	71	54	52	42	45	39	31	22	18

Note 1.—Rates from Dallas and Houston, Tex., to points in Texas on the Texas & Pacific Ry. and Houston East & West Texas Ry. as shown in Texas Lines Basing Tariff No. 2, Wyatt's I. C. C. No. 2.

Note 2.—All rates between Texas points and points in Louisiana as shown in Southwestern Lines Tariff 24-T, Leland's I. C. C. No. 871.

Note 3.—All mileages used as shown in Texas Lines Mileage Circular No. 6, Wyatt's I. C. C. No. 10, and Texas & Pacific Ry. Local Distance Table Circular 78, I. C. C. No. 1872.

Comparison of Rates Paid by Wholesale Grocers at Shreveport and by Their Texas Competitors to Common Destinations.

From—	To—	Dist. Miles	Shreveport, Cents.	El Paso, Cents.	Fort Worth, Cents.	Day, Cents.	Canned fruits, Cents.	Lard and bacon, Cents.	Green coffee, Cents.	Bag, Cents.	Ties, Cents.	Hanging and ties, Cents.	Ex- tracts, Cents.	Cheese, Cents.
Nacogdoches.....	Jocquin	49.6	21.0	21.0	21.0	20.5	21.0	21.0	21.0	21.0	21.0	18.0	27.0	25.0
Shreveport.....	do.....	42.8	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	40.0	28.0
Nacogdoches.....	Teneha	38.1	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	17.0	15.0	23.0	21.0
Shreveport.....	do.....	54.3	31.0	31.0	31.0	34.0	31.0	31.0	31.0	34.0	31.0	24.5	51.0	42.0
Nacogdoches.....	Timpson	25.8	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport.....	do.....	63.9	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	52.0	43.0
Nacogdoches.....	Center	49.7	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	26.0	18.0	35.0	32.0
Longview.....	do.....	67.8	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport.....	do.....	67.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Longview.....	Buckville	26.2	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	13.0	11.0	19.0	17.0
Shreveport.....	do.....	84.6	35.0	35.0	35.0	40.0	35.0	35.0	35.0	40.0	35.0	24.5	60.0	49.0
Marshall.....	Elysian Fields.....	17.5	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport.....	do.....	57.3	71.0	71.0	71.0	74.0	71.0	71.0	71.0	74.0	71.0	24.5	105.0	92.0
Texarkana.....	Marshall	66.7	26.0	25.5	23.5	21.5	26.0	26.0	26.0	26.0	26.0	18.0	33.0	30.0
Shreveport.....	do.....	42.0	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Texarkana.....	Jefferson	51.2	22.0	22.0	22.0	21.0	22.0	22.0	22.0	22.0	22.0	18.0	28.0	26.0
Marshall.....	do.....	15.7	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	8.0	16.0	14.0
Shreveport.....	do.....	47.7	30.0	30.0	30.0	35.0	30.0	30.0	30.0	35.0	30.0	24.5	50.0	42.0
Longview.....	Sun Augustine.....	87.2	37.0	32.5	29.5	27.0	37.0	37.0	37.0	37.0	37.0	18.0	48.0	44.0
Nacogdoches.....	do.....	69.1	32.0	32.0	32.0	30.0	32.0	32.0	32.0	32.0	32.0	18.0	42.0	38.0
Beaumont.....	do.....	120.5	38.0	29.0	26.5	25.5	41.0	41.0	41.0	41.0	41.0	18.0	51.0	47.0
Shreveport.....	do.....	85.0	39.0	39.0	39.0	43.0	39.0	39.0	39.0	43.0	39.0	24.5	61.0	52.0
Pittsburg.....	Avinger	30.9	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.4	21.0	19.0
Shreveport.....	do.....	66.1	42.0	42.0	42.0	44.0	42.0	42.0	42.0	44.0	42.0	24.5	64.0	51.0
Texarkana.....	Atlanta	23.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0	10.0	18.0	16.0
Shreveport.....	do.....	60.8	33.0	33.0	33.0	35.0	33.0	33.0	33.0	35.0	33.0	24.5	56.0	42.0
Marshall.....	Waskom	19.1	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	11.0	9.0	17.0	15.0
Shreveport.....	do.....	20.5	23.0	23.0	23.0	23.0	23.0	23.0	23.0	23.0	23.0	9.0	39.0	27.0

EXHIBIT 3.

Comparison of Rates Paid by Wholesale Saddlery and Vehicle Dealers at Shreveport and by Their Texas Competitors at Common Destination.

From—	To—	Distance. Miles.	Wagons. Cts.	Rug-gies. Cts.	Sad-dles. Cts.	Harn-ess. Cts.	Horse col-lars. Cts.	Leath-er. Cts.
Dallas.....	Jonesville	163.7	39.2	48.8	61.0	61.0	61.0	56.0
Shreveport....	...do.	26.0	40.0	60.0	40.0	40.0	40.0	28.0
Dallas.....	Marshall	147.7	36.8	45.6	57.0	57.0	57.0	53.0
Shreveport....	...do.	42.0	56.0	84.0	56.0	56.0	56.0	42.0
Dallas.....	Elysian Fields.	165.2	54.0	56.0	70.0	70.0	70.0	64.0
Shreveport....	...do.	57.3	105.0	157.5	105.0	105.0	105.0	82.0
Dallas.....	Teneha	180.2	58.0	59.2	74.0	74.0	74.0	68.0
Shreveport....	...do.	54.3	51.0	76.5	51.0	51.0	51.0	42.0
Dallas.....	Joaquin	192.0	58.0	60.8	76.0	76.0	76.0	70.0
Shreveport....	...do.	42.8	40.0	60.0	40.0	40.0	40.0	40.0

Comparison of Rates Paid by Furniture and Stationery Dealers at Shreveport and by Their Texas Competitors at Common Destinations.

From—	To—	Distance. Miles.	Station-ery. Cts.	Docu-ment files, k d. Cts.	Sales books, cash slips. Cts.	Talking machines, records. Cts.	Iron parts, office chairs. Cts.	Furni-ture, new, e. l. Cts.
Dallas.....	Nacogdoches ..	168.1	71.0	65.0	58.0	71.0	55.0	41.0
Galveston.....	...do.	186.0	62.0	57.0	51.0	62.0	47.0	36.0
Shreveport....	...do.	92.4	66.0	57.0	48.0	66.0	43.0	41.0
Dallas.....	Tyler	103.4	53.0	49.0	36.0	53.0	41.0	25.6
Galveston.....	...do.	262.8	81.0	74.0	64.0	81.0	60.0	45.0
Shreveport....	...do.	107.6	91.0	78.0	66.0	91.0	59.0	57.0
Dallas.....	San Augustine.	211.9	80.0	72.0	60.0	80.0	58.0	46.0
Galveston.....	...do.	194.0	86.0	78.0	65.0	86.0	61.0	44.0
Shreveport....	...do.	85.0	61.0	52.0	43.0	61.0	39.0	36.0
Dallas.....	Longview	124.0	51.0	47.0	34.4	51.0	41.0	24.8
Galveston.....	...do.	280.1	84.0	76.0	65.0	84.0	61.0	47.0
Shreveport....	...do.	65.7	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Pittsburgh ...	126.0	52.0	48.0	35.2	52.0	42.0	24.8
Galveston.....	...do.	320.9	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	...do.	97.0	74.0	60.0	53.0	74.0	52.0	46.0
Dallas.....	Clarksville ...	130.8	61.0	56.0	40.8	61.0	48.0	28.8
Galveston.....	...do.	392.3	87.0	78.0	65.0	87.0	61.0	49.0
Shreveport....	...do.	133.1	105.0	92.0	74.0	105.0	71.0	58.0
Dallas.....	Carthage	160.6	69.0	63.0	57.0	69.0	54.0	40.0
Galveston.....	...do.	233.5	82.0	75.0	65.0	82.0	61.0	42.0
Shreveport....	...do.	74.9	60.0	49.0	40.0	60.0	35.0	35.0
Dallas.....	Mineola	78.2	37.0	34.0	25.6	37.0	30.0	19.2
Galveston.....	...do.	288.4	86.0	77.0	65.0	86.0	61.0	48.0
Shreveport....	...do.	111.5	79.0	64.0	58.0	79.0	55.0	48.0

EXHIBIT 4.

General Tariff of Class Rates, No. 3.

Effective February 10, 1902, with amendments in effect October 31, 1910.

The rates in this tariff shall be subject to Texas classification No. 1 and amendments or subsequent issue.

Section 1.—Table of Rates.

(Rates, in cents per 100 pounds to apply on merchandise by classes, transported by railroads between points in Texas, except as otherwise provided in Sections 2, 3, and 4, of this tariff.)

Distances, miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
10 and less.....	13	12	10	8	6	7	6	5	5	4
12 and over 10.....	14	12	11	9	6	7	6	5	5	4
15 and over 12.....	15	13	12	10	7	8	6	5	5	4
18 and over 15.....	16	14	12	10	8	9	7	6	5	5
21 and over 18.....	17	15	13	11	9	10	8	6	6	5
24 and over 21.....	18	16	14	12	10	11	9	7	6	5
27 and over 24.....	19	17	15	13	11	12	10	8	7	6
30 and over 27.....	20	18	16	14	12	13	11	9	7	6
33 and over 30.....	21	19	17	15	13	14	12	10	8	6
36 and over 33.....	22	20	18	16	14	15	13	10	8	7
39 and over 36.....	23	21	19	17	15	16	14	11	9	7
42 and over 39.....	24	22	20	18	16	17	14	11	9	7
45 and over 42.....	25	23	21	19	17	18	15	12	10	8
48 and over 45.....	26	24	22	20	17	18	15	12	10	8
51 and over 48.....	27	25	23	21	18	19	16	13	11	8
54 and over 51.....	28	26	24	22	18	19	16	13	11	9
57 and over 54.....	29	27	25	23	19	20	17	14	12	9
60 and over 57.....	30	28	26	24	19	20	17	14	12	9
63 and over 60.....	31	28	26	24	20	21	18	15	13	10
66 and over 63.....	32	29	27	25	20	21	18	15	13	10
69 and over 66.....	33	30	28	26	21	22	19	16	13	10
72 and over 69.....	34	31	29	27	21	22	19	16	13	10
75 and over 72.....	35	32	30	28	22	23	20	17	14	11
78 and over 75.....	36	33	31	29	22	23	20	17	14	11
81 and over 78.....	37	34	32	30	23	24	21	18	14	11
84 and over 81.....	38	35	33	30	23	24	21	18	14	11
87 and over 84.....	39	36	34	31	24	25	22	19	15	12
90 and over 87.....	40	37	35	32	24	25	22	19	15	12
93 and over 90.....	41	38	35	32	25	26	23	20	16	13
96 and over 93.....	42	39	36	33	25	26	23	20	16	13
99 and over 96.....	43	40	37	34	26	27	24	21	16	13
102 and over 99.....	44	41	38	35	26	27	24	21	16	13
105 and over 102.....	45	42	39	36	27	28	25	22	17	14
108 and over 105.....	46	43	40	37	27	28	25	22	17	14
111 and over 108.....	47	44	40	38	28	29	26	23	17	14
114 and over 111.....	48	45	41	39	28	29	26	23	17	14
117 and over 114.....	49	46	42	40	29	30	27	24	18	15
120 and over 117.....	50	47	43	41	29	30	27	24	18	15

124 and over 120.....	51	47	43	41	30	31	28	25	18	15
128 and over 124.....	52	48	44	42	30	31	28	25	18	15
132 and over 128.....	53	49	45	43	31	32	29	25	18	15
136 and over 132.....	54	50	45	43	31	32	29	26	19	16
140 and over 136.....	55	51	46	44	32	33	30	26	19	16
144 and over 140.....	56	52	47	45	32	33	30	26	19	16

168 Distances, miles.	Less than carloads.					Carloads.				
	1	2	3	4	5	A	B	C	D	E
148 and over 144.....	57	53	48	46	33	34	31	27	19	16
152 and over 148.....	58	54	49	47	33	34	31	27	19	16
156 and over 152.....	59	55	50	48	34	35	32	27	20	16
160 and over 156.....	60	56	51	49	34	35	32	28	20	16
164 and over 160.....	61	56	51	49	35	36	33	28	20	16
168 and over 164.....	62	57	51	49	35	36	33	28	20	16
172 and over 168.....	63	58	52	50	36	37	34	29	20	16
176 and over 172.....	64	59	53	51	36	37	34	29	21	16
180 and over 176.....	65	60	54	52	37	38	35	29	21	16
184 and over 180.....	66	61	55	53	37	38	35	30	21	16
188 and over 184.....	67	62	56	54	38	39	36	30	21	16
192 and over 188.....	68	63	57	55	38	39	36	30	21	16
196 and over 192.....	69	64	58	56	39	40	37	31	22	17
200 and over 196.....	70	65	58	56	39	40	37	31	22	17
205 and over 200.....	71	65	58	56	40	41	37	31	22	17
210 and over 205.....	72	66	59	57	40	41	38	32	22	17
215 and over 210.....	73	67	59	57	41	42	38	32	22	17
220 and over 215.....	74	68	59	57	41	42	38	32	22	17
225 and over 220.....	75	69	59	57	42	43	39	33	23	17
230 and over 225.....	76	70	60	58	42	43	39	33	23	17
235 and over 230.....	77	70	60	58	43	44	39	33	23	17
240 and over 235.....	78	71	60	58	43	44	40	34	23	17
245 and over 240.....	79	71	60	58	44	45	40	34	23	17
Over 245	80	72	60	58	44	46	40	34	23	17

Section 2.—Joint Rates.

For the transportation of shipments over two or more railroads which are not under the same management and control, and not otherwise provided for, the rates shall be made by adding to the rates prescribed in table of rates, Section 1, of this tariff, the following, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	8	7	6	5	4	4	4	3	2	2

Provided: 1. That when the sum of the rates prescribed for local application is less than a joint rate made in accordance with the above instructions, such sum of rates shall be used as the joint rate.

2. That the joint rates in common-point territory shall not exceed the following figures, viz:

Class	1	2	3	4	5	A	B	C	D	E
Rate	80	72	60	58	44	46	40	34	23	17

except in cases where greater rates may be made by using the rates provided in exceptions, Section 3, of this tariff.

NOTE.—The term "common-point territory" designates that portion of Texas lying south of the Amarillo division of the Chicago, Rock Island & Gulf Railway, but including Amarillo, and east of and including points on a line drawn from Amarillo via Midland (Cir. No. 3572, effective Nov. 1, 1910) on the Texas & Pacific Railway; San Angelo on the Gulf, Colorado & Santa Fe Railway; Brady on the Fort Worth & Rio Grande Railway; Llano on the Houston & Texas Central Railroad; San Antonio on the Galveston, Harrisburg & San Antonio Railway and San Antonio & Aransas Pass Railway; Laredo on the International & Great Northern Railroad, and Alice and Corpus Christi on the San Antonio & Aransas Pass Railway; provided, that no part of the St. Louis, Brownsville & Mexico Railway south of Sinton and the Texas Mexican Railway shall be included in common-point territory. (Cir. No. 2271, effective July 10, 1905.)

169 Exception 1 to Note.—The Wichita Valley Railway west of Sagerton shall be considered in differential territory. See exception 3, section 4, for special differential rates. (Cir. 3194, effective Sept. 15, 1909.)

Exception 2 to Note.—The Concho, San Saba & Llano Valley Railroad (canceled by Cir. No. 3368, effective Apr. 1, 1910).

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 11th Day of March, A. D. 1912.

Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, and HENRY B. SCHREIBER, Constituting the Railroad Commission of Louisiana,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN Railway Company of Texas, Burrs Ferry, Brownell & Chester Railway Company, Eastern Texas Railroad Company, The Texas & Pacific Railway Company, Gulf, Colorado and Santa Fe Railway Company, Houston & Shreveport Railroad Company, The Houston, East & West Texas Railway Company, Texas & New Orleans Railroad Company, The Missouri, Kansas & Texas Railway Company of Texas, Texarkana & Fort Smith Railway Company, The Kansas City Southern Railway Company, The Texas & Gulf Railway Company, Marshall & East Texas Railway Company, Timpson & Henderson Railway Company, Shreveport, Houston & Gulf Railroad Company, Texas Southeastern Railroad Company, Caro Northern Railway Company, The Nacogdoches & Southeastern Railroad Company, International 170 & Great Northern Railroad Company, and Thomas J. Freeman, Receiver thereof; Groveton, Lufkin & Northern Railway Company, Moscow, Camden & San Augustine Railway, Jefferson & Northwestern Railway Company, The Gulf & Interstate Railway Company of Texas, The Galveston, Harrisburg & San Antonio Railway Company, Galveston, Houston & Henderson Railroad Company, The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912; and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas herein-

after mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

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On the Texas & Pacific Railway.

Class rates in cents per 100 pounds.

From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Waskom, Tex.	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.	20	27	25	23	19	20	17	14	12	9
Longview, Tex.	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.	34	31	29	27	21	22	19	16	13	10
Camps, Tex.	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.	42	39	36	33	25	26	23	20	16	13
Crow, Tex.	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.	61	56	51	49	35	36	33	28	20	16
Forney, Tex.	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.	65	60	54	52	37	38	35	29	21	16
Orphans' Home, Tex.	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

On the Houston, East & West Texas Railway.

Class rates in cents per 100 pounds.

From Shreveport, La., to—	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.	48	45	41	39	28	29	26	23	17	14
Renova, Tex.	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.	56	52	47	45	32	33	30	26	19	16
Valda, Tex.	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.	67	62	56	54	38	39	36	30	21	16
Midline, Tex.	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.	72	66	59	57	40	41	38	32	22	17
Humble, Tex.	73	67	59	57	41	42	38	32	22	17
Houston, Tex.	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its lines intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

And it is further ordered, That said defendants be, and
 173 they are hereby, notified and required to establish and put
 in force, on or before the 1st day of May, 1912, and main-
 tain in force thereafter during a period of not less than two years,

substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

By the Commission:

[SEAL.]

JOHN H. MARBLE, *Secretary*.

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EXHIBIT B.

Extracts from Texas Statutes.

Art. 4562, Paragraphs 4 and 8 (R. S. 1895). May fix different rates.—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

May alter, abolish, etc.—The Commission shall have power and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

Art. 4564 (R. S. 1895). Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter. (Ib., Sec. 5.)

Art. 4565 (R. S. 1895). When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court, at either of its terms, and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided, that if the court be in session at the time such right of

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action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Ib., Sec. 6.)

Art. 4566 (R. S. 1895). Burden of proof.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 4571, Paragraph 3 (R. S. 1895). Duty as to through freights.—The said Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Art. 4573 (R. S. 1895). Penalty for extortion.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars nor more than five thousand dollars.

Art. 4575 (R. S. 1895). Liability under this chapter; venue.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to

the person or persons, firm or corporation injured thereby for
176 the damages sustained in consequence of such violation; and

in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation.

Art. 4576 (R. S. 1895 as amended in 1901). Penalty when not

otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for every such act of violation it shall pay to the State of Texas a penalty of not more than \$5,000.

Art. 4581-*a* (R. S. 1895). Emergency freight rates.—In addition to the powers conferred on the Railroad Commission of Texas by Articles 4563 and 4567 of the Revised Statutes of this state, said Commission shall have power, when deemed by it necessary, to stop or prevent interstate rate wars and injury to the business or interests of the people or railroads of this state, or in case of any other emergency, to be judged of by the Commission; and it shall be its duty, after three days' notice to the roads interested, to alter, amend or suspend any existing freight rate on any railroad in this state, or to fix freight rates where none exist.

Art. 4581-*b* (R. S. 1895). May apply to one or more roads or parts of roads.—Said emergency rates, so made by the Commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the Commission.

Art. 4581-*c* (R. S. 1895). Rates take effect and remain in force, etc.—Said rates, so made, shall take effect at such time, and remain in force for such length of time, as may be prescribed by the Commission.

177 Act of July 12, 1907. Power to Make Emergency Rates.—

That in addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said Commission, whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff and to establish freight and passenger tariffs, rules and regulations for temporary use to have immediate effect where none exists.

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EXHIBIT C.

Rate Adjustment.

Portions of Texas & Pacific, St. Louis Southwestern Railway of Texas, and Missouri, Kansas & Texas Railway of Texas.

Circular No. 1178, effective September 7, 1900, and as amended by Circular No. 1531, effective February 10, 1902.

The charges for transporting shipments of the articles named in the following list, between points on the lines of railroad described below, shall be made at eighty (80) per cent. of the current rates on such articles:

Railroads upon which the adjustment of rates applies:

1. Between points on the Texas & Pacific Railway, and the Denison & Pacific Suburban Railway east of and including Denison, Sherman and Dallas, but not from Texarkana, Waskom and intermediate points on the Texas & Pacific Railway.

2. Between points on the Missouri, Kansas & Texas Railway of Texas east of and including McKinney, but not from Jefferson, Waskom and intermediate points on the Missouri, Kansas & Texas Railway of Texas.

3. Between points on the St. Louis Southwestern Railway of Texas east of and including Sherman, Plano and Dallas, and north of and including Tyler, but not from Texarkana.

List of articles subject to the adjustment of rates.

Carload and less than carload shipments of all articles which are, in carloads, subject to fifth-class and class- A, B, C, D and E rates.

Carload and less than carload shipments of:

Agricultural implements, including hand implements, plow points and other parts of agricultural implements, rough or finished, and wagons (farm) or parts of same, rough or finished.

Axes, in boxes.

Bagging for baling cotton (less than carload only).

Candy, invoice value 10 cents or less per pound.

Canned goods, consisting of canned fruits and vegetables, canned fish, lobsters, crabs, shrimps and clams, canned soup, broth, clam juice, cove oysters, canned syrup, jellies and preserves, in boxes, barrels or crates.

179 Cotton bale ties and buckles (carloads and less than carloads).

Cotton factory products.

Crackers.

Furniture, new, all kinds.

Glass, window, loaded in box cars.

Glassware, all kinds, except cut glassware.

Glucose, glucose syrup and grape syrup.

Iron and steel articles:

Architectural iron, including columns, pedestals, capitals, plates, saddles, door and window jambs, sills and lintels, rolled beams, angle bars and girders.

Axles, carriage or wagon.

Bolts, in boxes, barrels, casks or drums.

Bridge material, iron; merchants' iron, consisting of band, bar, boiler and plate iron and steel.

Carriage and wagon skeins and boxes in barrels, casks or kegs.

Castings, not machinery.

Chains, in bundles or casks.

Crowbars.

Fence posts.

Harrow teeth.

Hay bale ties.

Jail plate.

Kilns, lime, or parts thereof, manufactured of sheet or boiler iron,

with cast iron doors and door frames, grates and floors, K. D.,
crated, boxed or in bundles.

Lap rings.

Mattocks, in bundles.

Nails, cut or wire.

Nails, horse and mule shoe, in boxes or kegs.

Nuts, in boxes, barrels, casks or drums.

Picks, in bundles, barrels or casks.

Pipe, wrought, couplings and connections.

Plow steel, unfinished.

Poles, electric light or railway.

Rivets, in boxes or kegs.

Roofing, black, plain, corrugated or painted.

Sad irons, in bundles, boxes or casks.

Sash weights.

Sheet iron.

Shoes, horse or mule, in kegs.

Shutters.

180 Spikes, cut or wire.

Staples, in barrels, boxes or kegs.

Shingle bands, in bundles.

Skelp iron.

Sledges, in bundles (without handles).

Strap hinges, in barrels or kegs, invoice value $2\frac{1}{2}$ cents or less
per pound.

Washers, in boxes, barrels, casks or drums.

Wire, barbed or telegraph (not copper).

Wagon tires.

Wire rope.

NOTE.—When any of the foregoing articles are shipped together
in mixed carloads they shall be charged eighty (80) per cent. of
the rates prescribed in Commodity Tariff No. 17-A for the trans-
portation of carload shipments of angle, hoop, rod and band iron.

Machinery, engines and boilers, except carload shipments of ma-
chinery, engines and boilers for cotton gins, cotton compresses and
cotton seed oil mills.

Matches.

Packing house products.

Paints, dry or in oil.

Peanuts.

Rice.

Rope.

Shot.

Soap, common.

Soda, bi-carbonate of, and soda ash.

Starch.

Stoves and hollow ware, grates, fenders and baskets.

Sugar (except lemon and maple sugar), molasses, syrup, jelly,
preserves, fruit butter and mince meat.

Tin plate.

Tobacco, plug, in packages weighing sixty pounds or more.

Tobacco, plug, in packages weighing less than sixty pounds each.

Trunks, empty, N. O. S.

Whisky and alcohol, in wood or glass, invoice value 50 cents or less per gallon.

Woodenware, viz.: Wooden bale boxes, barrel covers, barrel (paper), bowls, brush blocks, buckets, bungs, butter ladles, butter molds, butter trays, butter tubs, churns, clothes horses, clothes
181 pins, clothes racks, firkins, fish kits, handles (axe, broom and mop), kegs, measures, pails (wooden or paper) N. O. S., potato mashers, pastry boards, rolling pins, step and extension ladders N. O. S., tea caddies (wood), trays N. O. S., tubs, washboards, sieves, brooms, cheese and butter boxes, lap boards, skirt boards, lemon squeezers, tooth picks, match splints of wood, rope reels, shot cases, sieve rims, skewers, snow shovels, towel racks, wooden faucets, wooden scoops, wooden spoons, paper bags, blacking, blueing, bottles, brushes, cans, lamp chimneys, coffee mills, crayons, galvanized iron tubs and pails, ink, leads, mops (cotton), shot, paper, rope, pipes (smoking), twine, oil tanks and sifters. The above articles may be shipped together as mixed carloads of woodenware, minimum weight 15,000 pounds per car.

NOTE.—Baskets may be included with above articles of woodenware, carloads.

This order shall take effect September 7, 1900, it being understood that the Commission still holds under advisement for further action the matter of the adjustment herein provided, and will adopt, without further notice, such amendments to the order, respecting the extent of the territory in which the adjustment shall apply, the list of articles which shall be subject to it, and the percentage of the current rates, as actual conditions may require. (Circular No. 1178, effective September 7, 1900.)

NOTE.—The 10-cent rate authorized by Circular No. 1941, to apply on sundry commodities from Texarkana to Clarksville, canceled by Circular No. 2047, effective May 11, 1904.

EXCEPTION.—Box and crate material, in carloads, shall not be subject to the adjustment of rates prescribed by this order. (Circular No. 2445, effective April 7, 1906.)

(Extract from Sixteenth Annual Report of the Railroad Commission of the State of Texas for the year 1907, pages 265, 266 and 267.)

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In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY

v.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, Re-
spondent.*Answer of the United States.*

(Filed May 29, 1912.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

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III.

The Interstate Commerce Commission expressly found that "The class rates of the Texas Commission within the distances here involved are not too low. This the carriers themselves do not urge." As to whether other rates prescribed by the Texas Commission were or are unreasonably low, respondent denies knowledge or information sufficient to form a belief, and respectfully suggests to the court that the question is immaterial.

IV.

Respondent further denies knowledge or information sufficient to form a belief as to the following allegations of the petition:

(1) As to petitioner's reasons for not attacking, either in the courts or before the Interstate Commerce Commission, the rates set by the Railroad Commission of Texas. (Petition, sec. VIII.)

(2) As to any indirect effect of the order upon other carriers not parties thereto. (Petition, p. 11.)

(3) As to any alleged general disturbance of freight rates, classifications, and traffic movement in southwestern territory, and as to

road Commission of Louisiana, were complainants, and the
186 petitioner herein and certain other carriers were defendants,
and alleges that said order was duly served upon said de-
fendants.

The commission further alleges that in the complaint in said pro-
ceeding it was alleged that the present class rates maintained, ex-
acted and collected by said petitioner, and by the Houston East &
West Texas Railway Co. and the Houston & Shreveport Railroad Co.,
for the transportation of traffic from Shreveport, in the State of
Louisiana, to the points in the State of Texas named in said order,
were unjust and unreasonable in and of themselves.

The commission further alleges that in said complaint it was
alleged that the rates maintained, exacted and collected by said
petitioner, in each instance, for the transportation of traffic in a
westerly direction over its line of railway from Shreveport to Dallas
in the State of Texas and to points on said line intermediate be-
tween Shreveport and Dallas were greater than rates contemporane-
ously maintained, exacted and collected by said petitioner, in each
instance, for the transportation of like traffic equal distances in an
easterly direction over said line from Dallas to Shreveport and to said
intermediate points between Shreveport and Dallas, and that said ad-
justment of rates was unduly disadvantageous and prejudicial to
Shreveport and unduly advantageous and favorable to Dallas.

The commission further alleges that in said complaint it was
alleged that the rates maintained, exacted and collected by the Hous-
ton East & West Texas Ry. Co. and the Houston & Shreveport
187 Railroad Co., in each instance, for the transportation of traffic
in a westerly and southerly direction over their line of rail-
way from Shreveport to Houston in the State of Texas and to points
on said line intermediate between Shreveport and Houston were
greater than rates contemporaneously maintained, exacted and col-
lected by said Houston East & West Texas Railway Co. and Houston
& Shreveport Railroad Co., in each instance, for the transporta-
tion of like traffic equal distances in an easterly and northerly
direction over said line from Houston to Shreveport and to said
intermediate points between Shreveport and Houston, and that
said adjustment of rates between Shreveport on the one hand and
Houston on the other hand was unduly disadvantageous and prejudi-
cial to Shreveport and unduly advantageous and favorable to Hous-
ton.

The commission further alleges that in said complaint it was
alleged that the rates and practices applied by said petitioner and
by the Houston East & West Texas Railway Co. and the Houston
& Shreveport Railroad Co., in connection with the transportation
at Shreveport of interstate shipments of cotton, as compared with the
rules and practices applied by said petitioner and by the Houston
East & West Texas Railway Co. and the Houston & Shreveport Rail-
road Co., in connection with the transportation of points in the State
188 of Texas of other shipments of cotton, were unduly disad-
vantageous and prejudicial to Shreveport and unduly advan-
tageous and favorable to said points in the State of Texas.

The commission further alleged that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered by the allegations contained in said complaint were submitted to the commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the commission for determination, whereupon, the commission determined said matters and made a report which included the commission's decision, conclusions, order and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon the evidence aforesaid and as shown in and by said report and said order, the commission found that the present class rates maintained, exacted and collected by said petitioner, and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad

189 Co., for the transportation of traffic from Shreveport to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates maintained, exacted and collected by the petitioner, in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted and collected by said petitioner, in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas; that the rates maintained, exacted and collected by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted and collected by said Houston East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and

190 that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said petitioner and by the Houston East & West Texas Railway Co.

and the Houston & Shreveport Railroad Co. in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas, and further found that the reasonable class rates to be charged as maxima in the future by said petitioner and by the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. for two years from and after May 1, 1912, in lieu of the present class rates of said petitioner and of the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. would be the rates named in said order, and that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully, 191 in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition herein.

The commission further alleges that the rates named as maxima in said order will furnish to said petitioner and to the Houston East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. full, reasonable, fair, and just compensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition.

The commission further alleges that said order was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the commission denies each of and all the allegations to the contrary contained in said petition.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

192 All of which matters and things this respondent is ready to aver, maintain and prove as this honorable court shall direct, and thereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor*.

CITY OF WASHINGTON,
District of Columbia, ss:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 23d day of May, 1912.

GEORGE B. MCGINTY,

[NOTARIAL SEAL.]

Notary Public.

193 In the United States Commerce Court.

No. 68. In Equity.

TEXAS & PACIFIC RAILWAY Co., Petitioner,
 vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition of Intervention of the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas.

Filed June 4, 1912.

To the Honorable the Judges of the United States Commerce Court:

The St. Louis Southwestern Railway Company, a corporation duly organized under the laws of the State of Missouri, and authorized to do business under the law of the States of Arkansas and Louisiana, with its principal office in the City of St. Louis, State of Missouri; and the St. Louis Southwestern Railway Company of Texas, a corporation duly organized under the laws of the State of Texas, with its principal office in the City of Tyler, Smith County, Texas (hereinafter called petitioners), by leave of the court join and file this, their petition of intervention in the above entitled
 194 and numbered cause, and thereupon complain, and say:

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Petitioners are carriers by railroad, engaged in the carriage of freight and passengers between points in the State of Texas and points in the State of Louisiana and various other States and Territories of the United States and foreign countries, and petitioner, St. Louis Southwestern Railway Company of Texas, is engaged in the carriage of freight and passengers between points in the State of Texas, and petitioner, St. Louis Southwestern Railway, is engaged in the transportation of freight and passengers between points in

the State of Louisiana and between points in the State of Arkansas, and between points in the State of Missouri; and your petitioners have been such carriers engaged in the handling of such commerce during the time of all the happenings hereinafter referred to, and were for many years prior thereto. The tariffs (rates, charges, classifications, regulations and practices observed and enforced by each of them in the conduct of the aforesaid business have been legally established, filed and observed, and the said rates, charges, classifications, regulations and practices were, as petitioners are informed and charges, just, fair and reasonable as to all parties, places, communities and States interested therein.

II.

Heretofore, on or about the 8th day of March, 1911, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, filed their petition before the Interstate Commerce Commission against petitioners and other carriers engaged in commerce between points in Louisiana and points
195 in the State of Texas, said cause being number 3918 on the docket of said Interstate Commerce Commission. Said petition was filed on behalf of various merchants, manufacturers, jobbers and other shippers residing in the City of Shreveport. Complaint was made that the defendants had in effect rates between points in Texas on various classes and commodities which were lower than the rates in effect between Shreveport and Texas points for equal distances, and that the Texas points were in competition with Shreveport. It was further alleged: "The said rates between said Shreveport and said competitive points are so unjust, unreasonable and unduly prejudicial and discriminatory as to deprive the various shippers and consignees doing business at Shreveport of the benefits which, under just, reasonable and non-discriminatory rates, would be afforded to such shippers and consignees at said Shreveport, and in many instances are absolutely prohibitive of any commerce between said Shreveport and said points in Eastern Texas. As a result of said unlawful rates, Texas competitors of said Shreveport shippers and consignees are given an undue advantage in said competitive territory in said Eastern Texas."

The petition prayed for an order requiring defendants to cease and desist from the alleged discrimination against Shreveport interests and prescribing just and reasonable rates between Shreveport and the various Texas points in the petition named on all the classes and commodities therein referred to.

Answers were filed to said petition by various defendants, among others by petitioners, which answers, among other things, denied that the Shreveport business interests on whose behalf the said complaint was filed were unable to do business in Texas, as
196 alleged in the petition, because of any rate or rate adjustment applied or enforced by the defendants, and that the rates and regulations complained of were unjust, unreasonable or unduly discriminatory. On the contrary, the said rates and regulations of

the defendants, it was averred, were just, reasonable and non-discriminatory. It was further averred that the rates applicable between points in Texas were prescribed by the Railroad Commission of Texas and the same were improper and unduly low and were applied by the carriers under protest.

By permission of the Interstate Commerce Commission numerous pleas of intervention were filed by shippers and commercial bodies in the State of Louisiana, such shippers and commercial bodies joining in the prayer of complainants.

III.

Testimony was taken and arguments were made in the case, and the same was submitted to the Interstate Commerce Commission, January 26, 1912. Thereafter, on March 11, 1912, the Commission handed down *his* report and order in said cause, four members of the Commission holding with complainants as hereinafter stated and three members dissenting from such holding.

IV.

The opinion of the majority of the Interstate Commerce Commission, after briefly stating the case, sets forth what is referred to as the policy of the Railroad Commission of Texas and, after quoting a number of utterances of the Texas Commission, it, among other things, states:

197 "There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities. We find in the early reports of that Commission, which are quoted at length in the record, evidences that the Texas Commission believed that the interstate carriers operating from the North and the East into Texas were pursuing a policy hostile to the development of that State. The Texas Commission was conscious that it was within the power of these interstate carriers to so adjust rates as to make Texas entirely or largely dependent upon other States and thus restrict the growth of her cities and fix the nature of her industries, the employments of her people, and the character of her civilization so far as these depend on economic and industrial conditions. With this thought in mind, the Texas Commission sought to establish a Texas policy and to make the railroads within that State contribute in the manner believed by her own people to best subserve their own interests."

Further discussion of the policy of the Texas Commission is had and the opinion then states:

The Problem Raised.

"The petition of the complainants is that this Commission 'established the same basis of rates of transportation between Shreveport and East Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances.'"

The conclusion is then announced that the Interstate Commerce Commission has no authority to require an interstate carrier to put into effect from any interstate point a schedule of State made rates as such, that its authority is limited to condemning unreasonable rates and fixing in their stead maximum rates that are just and reasonable, after which the following questions are propounded:

198 "Passing then to the question of discrimination, has this

Commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a State by imposing upon that city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining State?"

The answer is given that the Interstate Commerce Commission has power to prevent discrimination caused by the application of lower State rates than interstate rates where shippers under the two classes of rates come in competition with each other.

The following conclusions are then announced:

"We find:

"(1) That the present rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table, and to points in Texas on the Houston, East & West Texas Railway, are unjust and unreasonable.

"(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

"On the Texas & Pacific Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 lbs.									
		1	2	3	4	5	A	B	C	D	E
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10

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Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

"On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Distance, Miles.	Class rates in cents per 100 lbs.									
		1	2	3	4	5	A	B	C	D	E
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16

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Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

"(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

"(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

"(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under Western Classification.

"(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

"(7) That the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any
201 commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

"It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

"As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under the conditions elsewhere on the lines of the carriers."

Two concurring opinions were filed and three dissenting opinions. The dissenting opinions announce the proposition that the Interstate Commerce Commission has no authority to control State rates or to adopt State rates as measures of interstate rates unless the interstate rates complained of are unreasonable and the State rates are reasonable, and, therefore, the order of the Commission was without lawful authority, null and void.

In accordance with the opinion of the majority, an order was entered making effective the conclusions so announced, the same to

become operative on or before May 1, 1912, and to remain
202 in force for a period of not less than two years thereafter.

The effective date of said order was later, on April 19, 1912, extended to June 1, 1912, and later to July 1, 1912.

A copy of the report and order of the Interstate Commerce Commission in said cause No. 3918 is attached to the petition of Texas & Pacific Railway Company, hereinafter called original petitioner, and reference is here made thereto and the Court is asked to consider the same as if fully set out herein.

V.

While the order of the Interstate Commerce Commission is by its terms directed only against the original petitioners and The Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company, petitioner, is interested in the controversy or question before the Interstate Commerce Commission and is affected by said order in this:

1. Your petitioner, St. Louis Southwestern Railway Company, owns and operates lines of railway from St. Louis, Missouri, to Little Rock and Texarkana, Arkansas, Shreveport, Louisiana, Memphis, Tennessee, and intermediate points, as well as other points on lines in the States of Missouri, Illinois and Arkansas;

Your petitioner, St. Louis Southwestern Railway Company of Texas, owns and operates lines of railway from Texarkana, Texas, to Sherman, Fort Worth, Dallas, Hillsboro, Gatesville and Lufkin, Texas, including all intermediate points. That both of said companies have so operated said lines of railway for more than ten years; that the lines of railway of said two companies connect at the State line between Texas and Arkansas at Texarkana, which is a border

city; that the through trains operated over said lines of railway from points on the lines of the St. Louis Southwestern

203 Railway Company to points on the lines of the St. Louis Southwestern Railway Company of Texas, and through trains on the lines of the St. Louis Southwestern Railway Company of Texas to points on the St. Louis Southwestern Railway Company are operated by your petitioners in conjunction and are transferred from one to the other at the State line at the City of Texarkana, aforesaid. The lines of railway owned by your petitioners are commonly known and designated as the "Cotton Belt System." Your petitioners are each engaged in interstate and foreign commerce in the States above mentioned, and each is engaged in intrastate commerce in the States where its lines are situated, and have been so engaged for many years; that the tariffs, rates, charges, classifications, regulations and practices observed and enforced by your petitioners in the conduct of interstate and foreign commerce during the time they have been conducting such business has been legally established, filed and observed; that the said tariffs, rates, charges, classifications, regulations and practices were, as your petitioners are informed and believe and charge the fact to be, just, fair and reasonable as to all parties, places, commodities, states and communities interested therein.

2. The lines of the Cotton Belt System, as it is called, extend from St. Louis, Missouri, and Memphis, Tennessee, to Sherman, Hillsboro, Gatesville and Lufkin and intermediate points, in Texas, and Shreveport, Louisiana, and intermediate points, and a large part of the revenues of the lines which compose said Cotton Belt System are derived from the handling of business interchanged between your petitioners at Texarkana, Texas, which originate at

204 St. Louis and Memphis, or moving on rates based on such points, and much other revenue accruing to the system is derived from business handled in connection with other rail-

way companies through Chicago, Little Rock, Memphis, Vicksburg, New Orleans, Galveston and other gateways. For many years rates from all defined territories into Southwestern territory, which includes the territory affected by the order in cause No. 3918, have been based on St. Louis, such rates being made by adding or deducting certain differentials to or from the St. Louis rates. The rates from Shreveport have, during all this time, been a differential under the St. Louis rate. The relation of rates from Shreveport to Texas points (not only those mentioned in the aforesaid order but practically all other points in the State) as such that because of the provisions of the Act to Regulate Commerce, and especially the fourth section thereof, and because of the natural and competitive conditions as to water rates, rail rates and commercial competition, any material reduction in the rates from Shreveport to the Texas points described in said order of the Interstate Commerce Commission will necessarily reduce rates on business moving through the gateways mentioned (*a*) to the territory so described; (*b*) to practically all other points in the State of Texas, and (*c*) to various points in other States in the Southwest and in the Republic of Mexico, all of which reductions in rates will result in a decrease in the revenues of petitioner and of the system of which it forms a part. If the Shreveport rates are not met a large part of the business now handled by said Cotton Belt System will move through Shreveport and over other lines on account of the readjustment of commercial conditions to meet the changed rate situation.

In the aforesaid petition filed before the Interstate Commerce Commission complaint is made of both the class and commodity rates from Shreveport upon the ground that they are unreasonable in themselves, but the burden of the complaint is that the rates are discriminatory against Shreveport and the discrimination is alleged to arise because of the fact that the defendants apply lower rates between points in Texas than are applied from Shreveport to Texas points for equal distances. No substantial evidence was offered on the hearing to support the contention that the rates complained of, either class or commodity, were unjust and unreasonable in and of themselves, and, as appears from its report, the Interstate Commerce Commission does not find that the several commodity rates complained of were unjust or unreasonable. The Commission's finding is that the rates from Shreveport are unjustly discriminatory under Section 3 of the Act to Regulate Commerce because of lower rates for equal distances in Texas, and the order requires the adoption of the Texas rates, not because the Texas rates are reasonable or just or because the Shreveport rates are unreasonable or unjust, but because of the alleged discrimination. While the Commission has power, under some circumstances, to condemn rates that are discriminatory, its authority in establishing other rates in their stead, petitioner avers, is limited to the establishment of rates that are, under the facts of the case, just and reasonable in and of themselves.

Since the Commission did not, in this instance, pass upon the reasonableness of the commodity rates complained of in cause No. 3918 or find that the rates applied by the defendants between points in

206 Texas were just or reasonable in and of themselves, its action in making the said order was purely arbitrary, and, being arbitrary, its effect is to deprive petitioner and the other carriers interested of their property without due process of law, contrary to the fifth amendment to the Constitution of the United States.

VII.

The commodity rates adopted by the Interstate Commerce Commission in the said order as a basis for the rates from Shreveport to the Texas points therein named are rates prescribed by the Railroad Commission of Texas, which is the rate-making body in Texas. The law creating the Railroad Commission and defining its powers and duties and fixing the penalties for a failure to comply with its orders and regulations is sufficiently set forth in paragraph VI, pages 15 to 18, of the petition of the original petitioners, and Exhibit "B" thereto, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length herein.

The rates so adopted for observance by The Texas & Pacific Railway Company are the rates made under circular No. 1178 of the Railroad Commission of Texas, effective September 7, 1900, as amended by circular No. 1531, effective February 10, 1902, the nature of which is sufficiently explained in paragraph VII, pages 18 to 20, of the said petition, and said circular No. 1178, as so amended is set out at length in Exhibit "C" to said petition, to which paragraph and exhibit reference is here made, and petitioner asks that they be considered as fully as if set out at length in this connection.

207 The general mileage scale of rates adopted by the Railroad Commission of Texas, petitioner avers, is too low, and said rates, considering the volume of traffic handled, the short distances at which the maximum rates are reached and the large scope of territory over which the maximum rates apply, are unjust and unreasonable, but the basis of rates prescribed by said circular No. 1178 of said Railroad Commission (the rates thereunder being twenty per cent less than the standard mileage rates enforced in Texas) are even more unjust and unreasonable. All of said rates were established over the protest of petitioner and the other carriers interested, and they are unwillingly applied by them, but the Railroad Commission being the rate-making body in Texas they have no authority to change the rates and must, subject to severe penalties, apply them until they are set aside.

That part of petitioner, St. Louis Southwestern Railway Company of Texas' line extending from Tyler to Lufkin, Texas, was required by it in 1901, under an Act of the Twenty-sixth Legislature of the State of Texas (page 187, General Laws of Texas, 1899), Section 7 of which provides that "by accepting the provisions of this Act, the St. Louis Southwestern Railway Company of Texas agrees to abide

by the rates, rules and regulations of the Railroad Commission of the State of Texas until the same are set aside by a court of competent jurisdiction on final hearing." By reason of this provision and many other considerations—among them the difficulty of attacking a single rate established by the Commission, the difficulty of securing the consent of all the lines interested to attack the whole body of the Commission's rates and the futility of an effort to do this by a single line, the desire to avoid litigation and the confusion, strife and unrest incident to a suit to set aside the whole body of the Commission's rates, and the hope that at some time in the near future

the volume of business handled by petitioner, St. Louis 208 Southwestern Railway Company of Texas, would so increase as to make the Commission's rates yield it a fair return upon its investment, which hope, however, has not been realized—it has submitted to the said unjust and unreasonable rates so prescribed and enforced by the Railroad Commission of Texas. Said rates, however, do not, as the record in this case shows, afford it a fair return upon its investment, notwithstanding the fact that its property is economically managed and it secures all the revenue from the operation thereof that it is able to secure under such rates and the rates prescribed in the tariffs on file with the Interstate Commerce Commission issued by it or to which it is a party. Its total revenues from the operation of its road for the year ending June 30, 1911, were \$4,212,379.92. Its total operating expenses for said period were \$4,046,967.56, which left a net operating revenue of \$165,412.36. For said year its property was valued for taxation purposes by the State Tax Board of the State of Texas at \$13,248,000.00, which sum, it avers, is not equal to the fair and reasonable value thereof. Upon information and belief, petitioner, St. Louis Southwestern Railway Company of Texas, avers that its line is reasonably worth about \$30,000.00 per mile, and that it owns 703.3 miles of lines, and a reasonable return thereon would be 7 per cent on the fair and reasonable value of its property. Out of the net operating revenue there had to be paid taxes, hire of equipment, rents of various kinds and interests on bonded indebtedness, all of which amounted to \$500,494.31, leaving a deficit of \$306,876.51 as the result of the year's operation. It further avers that it has no reasonable prospect of receiving a better return upon its investment for the current year.

The rates so prescribed by the Railroad Commission of 209 Texas, therefore, being unjust and unreasonable, and they being unwillingly applied by it and the other carriers affected thereby, the Interstate Commerce Commission had no power or authority to make them the basis of interstate rates from Shreveport to points in Texas, for, as previously stated, its authority is limited to the establishment of just and reasonable rates.

Your petitioner, St. Louis Southwestern Railway Company, owns 621.98 miles of railway, which it operates, and which on information and belief it avers is worth the reasonable value of \$35,000.00 per mile. It has other operated mileage which it does not own, and

the operating contracts thereon are of large value. It owns other property and has other assets of large value, the details of all of which will be shown on the hearing hereof. It needs additional terminal facilities at various points, as well as additions and betterments, including rolling stock and other necessary improvements which cannot be made out of its earnings and leave a reasonable return on the reasonable value of all of its property.

That the St. Louis Southwestern Railway Company of Texas needs improvements in its grade, such as reducing grades, eliminating curves; it also needs to acquire additional terminals at various points, as well as increase in its rolling stock and other improvements, none of which can be done out of its earnings and leave any return on the value of its property.

That these conditions on both of said lines have obtained for many years, notwithstanding they have been economically and properly administered and operated.

VIII.

The said order of the Interstate Commerce Commission requires that the railway companies therein named cease and desist from charging higher rates upon any commodity from Shreveport into

210 Texas than are contemporaneously charged for the carriage of such commodity from the Texas points named towards

Shreveport for an equal distance. The State of Texas has a classification prescribed by the Railroad Commission of Texas in which many articles are differently classed from the classification provided in the Western Classification and under the Texas classification the railroad minima are frequently less than under the Western Classification, and the mixtures are different under the two classifications. By reason of these facts the movement of freight under the Texas classification is more numerous upon the carriers than is the movement of freight under the Western Classification, and the revenues received from traffic handled under the Texas classification are less than the revenues from similar traffic handled under the Western Classification. The Interstate Commerce Commission adopts the Western Classification as to freight carried from Western Classification territory into the State of Louisiana as well as into the State of Texas, and the Railroad Commission of Louisiana adopts said Western Classification for freight moving between points in that State, but under the order of said Commission herein complained of petitioners and the other carriers affected thereby will be compelled to adopt the Texas classification as to traffic moving from Shreveport to the defined Texas points, thereby causing a discrimination against the carriers subject to or affected by the order and against the shippers residing on other lines and at points other than Shreveport.

IX.

By reason of your petitioners having a long haul, there is a very light traffic over their lines from Shreveport to points directly affected by said order of the Interstate Commerce Commission. For

the calendar year ending December 31, 1911, your petitioners estimate that if they had handled the traffic which — did under the proposed reduction of rates maintained in said order, that they each would have suffered a loss of about \$407.46.

By reason of the facts pleaded and set out herein a reduction in the rates from Shreveport to the points mentioned in the order will of necessity effect a reduction in rates on practically all classes and commodities to the points in said order named, to the entire State of Texas, and to points in many other States in the Southwest and in the Republic of Mexico, not only on business moving through Shreveport, but on business through Memphis, St. Louis and the other gateways and territories herein mentioned, the loss in revenue from which to your petitioners would be not less than \$100,000.00 each per annum. All of which will be shown in detail upon the hearing hereof.

The rates on a large amount of traffic in the territory along and adjacent to the Mississippi River, petitioner avers upon information and belief are very low, because the rates on such traffic are affected by water competition. The City of Shreveport is situated on the Red River, which is a tributary of the Mississippi, and Shreveport is connected with Mississippi River gateways by several lines of railroad. By virtue of its location it is accorded lower rates on inbound freight than are accorded to distributing points in Texas named in said cause No. 3918. When these low inbound rates are added to the outbound rates from Shreveport it will be found, as petitioner is informed and believes, and upon such information and belief alleges the fact to be, that the total transportation charge on the commodities and classes mentioned and described in said order under existing rates to the territory mentioned and described

212 thereon is not materially higher than the total transportation charge on the same classes and commodities hauled into the same territory from distributing points in Texas directly affected by said order. In many instances the total transportation charges through Shreveport are less. The territory that Shreveport can now reach on such explanation is substantially as large as that which can be reached from Dallas. If the said order of the Interstate Commerce Commission is enforced, on the great volume of freight traffic referred to therein the total transportation charge into and out of Shreveport to the territory directly affected by said order will be largely reduced and petitioner is informed and believes, and on such information and belief alleges the fact to be, will be much lower than the total transportation charge on freight traffic which moves into and out of the Texas distributing points to the said territory, and therefore a large amount of traffic now handled by petitioner, St. Louis-Southwestern Railway Company of Texas, from Texas distributing points to said territory will be transferred to the business men of Shreveport and in consequence thereof this will entail upon petitioner large and substantial losses in freight and revenue, and will seriously affect such Texas distributing points.

The Railroad Commission of Texas has continuously exercised the powers conferred by the act under which it was created and the amendments thereof and supplements thereto, in the fixing of rates

within the State of Texas for the distribution therein of the products of manufacturers and wholesalers and others within the State of

213 Texas, and has continuously exercised the power of making emergency rates within the State, of Texas when rates into that State from points beyond the State were reduced to such extent as, in the judgment of the Commission, to affect injuriously the interests of manufacturers, wholesalers, jobbers and others within the State. If the reductions made by said order in cause No. 3918 should be enforced the Railroad Commission of Texas, petitioner avers on information and belief, will further reduce the rates in Texas, which are now too low, in order to meet the competition created by the order herein complained of. Such action on its part will place petitioner, St. Louis Southwestern Railway Company of Texas, and the other carriers interested between the upper and the nether millstones, and by reason of the orders of the Interstate Commerce Commission reducing interstate rates to prevent competition, followed by orders of the Railroad Commission making reductions to prevent competition, and the inability of petitioner, St. Louis Southwestern Railway Company of Texas, and the other Texas carriers to increase the Texas State rates, they will be wholly without remedy.

Wherefore, in view of the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the order of the Interstate Commerce Commission in said cause No. 3918, fixing commodity rates for shipments from Shreveport, Louisiana, to the points in Texas therein named, was made without power or authority, either directly or indirectly, conferred upon it by the Act to Regulate Commerce or any amendment thereof or supplement thereto, or by any other law of the United States, the Commission having no jurisdiction over the rates in Texas and the discrimination prohibited by Section 3 of the Act to Regulate Commerce and which the Commission is given power to prevent
214 by Section 15 of said Act, being a discrimination in interstate rates, and the power of the Commission in the substitution of rates for rates condemned being limited to the establishment of rates that are just and reasonable in and of themselves. The said order, therefore, petitioner avers upon information and belief, is void and is in violation of subdivision 3 of Section 8 of Article 1 of the Constitution of the United States and the tenth amendment to the Constitution of the United States and the Act to Regulate Commerce, especially Section 1 thereof, and the amendments thereto.

2. That if the Interstate Commerce Commission has power in any case to remove a discrimination caused by the application of different rates for the handling of State traffic and interstate traffic, such power does not exist where the State rates are made, not by the carriers, but by a governmental agency, and the carriers have no authority to change or modify them, and where, as in this case, the State rates are unduly low and are unjust and unreasonable.

3. That said order of the Interstate Commerce Commission is, for the reasons hereinbefore set forth, unjust, unreasonable and discriminatory, and therefore void.

4. That said order in so far as it undertakes to fix and establish commodity rates is invalid and void for the reason that there was no evidence before the Commission that the commodity rates complained of were unjust or unreasonable and the Commission wholly fails to find that they were unjust or unreasonable, and there was no evidence that the rates established in lieu thereof were just or reasonable and the Commission wholly fails to find that said rates were just or reasonable. The order, therefore, deprives petitioners and the other carriers affected thereby of their property without due process of law and takes private property for public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

XI.

Wherefore, petitioners pray that due service of this petition be made on respondent herein commanding it to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said order of the Interstate Commerce Commission dated March 11, 1912, be in all things enjoined and set aside and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof, and that the said rates so established by the Commission be declared to be unjust and unreasonable. Petitioners also pray for such general and special relief as the equities of the case may warrant.

E. B. PERKINS,
S. H. WEST,
ROY A. BRITTON,
DANIEL UPTHEGROVE,

Solicitors for Petitioners, St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

E. B. PERKINS,
S. H. WEST,
Of Counsel.

216 THE STATE OF MISSOURI,
City of St. Louis;

I, J. D. Watson, being duly sworn, state upon oath that I am the Assistant General Freight Agent of the St. Louis Southwestern Railway Company, one of the petitioners in the above entitled and numbered cause, and, as such, am authorized to make this affidavit; and that I have read the foregoing petition, and the allegations of fact set forth therein are true, and the allegations made upon information and belief I believe to be true.

J. D. WATSON.

Sworn to and subscribed by the said J. D. Waston before me, the undersigned authority, this the 10th day of June, A. D. 1912.

[Seal Margaret Lally, Notary Public, City of St. Louis, Mo.]

MARGARET LALLY,
Notary Public, City of St. Louis, Mo.

My commission expires Jan'y 11, 1913.

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In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY Co., Petitioner,

v.

THE UNITED STATES OF AMERICA.

Order of Intervention.

Entered June 4, 1912.

The St. Louis Southwestern Railway Co., St. Louis Southwestern Railway Co. of Texas and Missouri, Kansas and Texas Ry. Co. of Texas having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the St. Louis Southwestern Railway Co., St. Louis Southwestern Ry. Co. of Texas, Missouri, Kansas & Texas Ry. Co. of Texas be and they are hereby allowed to intervene and become parties intervenor and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervenors to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervenors and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

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In the United States Commerce Court.

In Equity. No. 68.

TEXAS & PACIFIC RAILWAY COMPANY, Petitioner; St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Intervening Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION et al., Intervening Respondents,

Answer of the Interstate Commerce Commission to Petition of Intervention of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

Filed June 27, 1912.

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

219 This respondent, which for convenience will be referred to hereinafter as the Commission, admits that it made and entered the order dated March 11, 1912, and included in Exhibit A to the original petition herein, in a proceeding then pending before it, wherein J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, were complainants, and the petitioner herein and certain other carriers were defendants, and alleges that said order was duly served upon said defendants.

The Commission further alleges that in the complaint in said proceeding it was alleged that the present class rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., and by the Texas & Pacific Railway Co., for the transportation of traffic from Shreveport, in the State of Louisiana, to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves.

The Commission further alleges that in said complaint it was alleged that the rates maintained, exacted, and collected by the Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted, and collected by said Texas &

220 Pacific Railway Co., in each instance, for the transportation of like traffic equal distances in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of

rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Dallas.

The Commission further alleges that in said complaint it was alleged that the rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted, and collected by said Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co., in each instance, for the transportation of like traffic equal distances in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston.

The Commission further alleges that in said complaint it was alleged that the rules and practices applied by the Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas.

The Commission further alleges that said complaint was duly served upon the parties named therein as defendants; that subsequent to such service the Commission accorded to the parties to said proceeding the full hearing provided for in section 15 of the act to regulate commerce; that at said hearing a large volume of testimony and other evidence bearing upon the matters covered by the allegations contained in said complaint were submitted to the Commission for its consideration, on behalf of said parties, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed, all matters involved in said proceeding, including the matters covered by the allegations contained in said complaint as aforesaid, were fully argued, after which they were submitted to the

Commission for determination, whereupon the Commission determined said matters and made a report which included the Commission's decision, conclusions, order, and requirements in the premises; that said report, which is included in Exhibit A to the petition herein, was duly served upon said defendants; that upon the evidence aforesaid and as shown in and by said report and said order, the Commission found that the present class rates maintained, exacted, and collected by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., for the transportation of traffic from

Shreveport to the points in the State of Texas named in said order, were unjust and unreasonable in and of themselves; that the rates maintained, exacted, and collected by said Texas & Pacific Railway Co., in each instance, for the transportation of traffic in a westerly direction over its line of railway from Shreveport to Dallas in the State of Texas and to points on said line intermediate between Shreveport and Dallas were greater than rates contemporaneously maintained, exacted, and collected by said Texas & Pacific Railway Co., in each instance, for the transportation equal distances of like traffic in an easterly direction over said line from Dallas to Shreveport and to said intermediate points between Shreveport and Dallas, and that said adjustment of rates was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to

223 Dallas; that the rates maintained, exacted, and collected by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co., in each instance, for the transportation of traffic in a westerly and southerly direction over their lines of railway from Shreveport to Houston in the State of Texas and to points on said lines intermediate between Shreveport and Houston were greater than rates contemporaneously maintained, exacted, and collected by said Houston, East & West Texas Railway Co. and Houston and Shreveport Railroad Co., in each instance, for the transportation equal distances of like traffic in an easterly and northerly direction over said lines from Houston to Shreveport and to said intermediate points between Shreveport and Houston, and that said adjustment of rates between Shreveport on the one hand and Houston on the other hand was unduly disadvantageous and prejudicial to Shreveport and unduly advantageous and favorable to Houston, and that the rules and practices applied by said Texas & Pacific Railway Co. and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. in connection with the concentration at Shreveport of interstate shipments of cotton, as compared with the rules and practices applied by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co., and the Houston & Shreveport Railroad Co. in connection with the concentration at points in the State of Texas of other shipments of cotton, were unduly disadvantageous

224 and prejudicial to Shreveport and unduly advantageous and favorable to said points in the State of Texas, and further found that the reasonable class rates to be charged as maxima in the future by said Texas & Pacific Railway Co., and by the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. for two years from and after May 1, 1912, in lieu of the present class rates of said Texas & Pacific Railway Co., and of the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. would be the rates named in said order, and the Commission alleges that said findings were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that, in making said report and said order, it considered exhaustively and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance,

and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations contained in the petition of intervention herein of the St. Louis Southwestern Railway Co. and St. Louis Southwestern Railway Co. of Texas.

The Commission further alleges that the rates named as maxima in said order will furnish to said Texas & Pacific Railway Co. and to the Houston, East & West Texas Railway Co. and the Houston & Shreveport Railroad Co. full, reasonable, fair, and just compensation for the services performed by them and covered by said rates, and denies each of and all the allegations to the contrary contained in said petition of intervention.

The Commission further alleges that said order was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the Commission denies each of and all the allegations to the contrary contained in said petition of intervention.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said petition of intervention in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and thereby prays that said petition of intervention be dismissed.

INTERSTATE COMMERCE COMMISSION.

By P. J. FARRELL, *Its Solicitor*.

226 CITY OF WASHINGTON,
District of Columbia, ss:

Franklin K. Lane, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer, and knows the contents thereof, and that the same is true.

FRANKLIN K. LANE.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 27th day of June, 1912.

[NOTARIAL SEAL.]

H. S. MILSTEAD,
Notary Public.

227

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.UNITED STATES OF AMERICA, Respondent, and INTERSTATE COM-
MERCE COMMISSION, Intervening Respondent.*Motion on Behalf Railroad Commission of Louisiana for Permis-
sion to Intervene as Party Respondent and to be Represented by
Counsel in the Above Entitled Suit.*

(Filed June 4, 1912.)

Comes now the Railroad Commission of Louisiana and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as respondent, and to be represented by counsel in the above entitled suit, and as ground for such motion respectfully shows that it, through its constituent members, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, was complainant in the complaint filed before the Interstate Commerce Commission on or about March 8, 1911, I. C. C. Docket, 3918, in which case said Interstate Commerce Commission made the order attacked in the above entitled cause, and that it is vitally interested in having the order of the said Interstate Commerce Commission sustained.

THE RAILROAD COMMISSION
OF LOUISIANA.By R. G. PLEASANT,
W. M. BARROW,
LUTHER M. WALTER.

228

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioners,
v.

UNITED STATES OF AMERICA.

Order of Intervention.

Entered June 4, 1912.

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

229

Journal Entry.

Proceedings of June 27, 1912.

No. 67.

HOUSTON, EAST & WEST TEXAS RY. CO. et al., Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION et al., Interveners.

No. 68.

THE TEXAS & PACIFIC RAILWAY CO., Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION et al., Interveners.

Said causes came on for final hearing upon the merits and the arguments of counsel were concluded, Mr. H. M. Garwood, Mr. H. A. Scandrett and Mr. Henry G. Herbel appearing on behalf of the petitioners, Mr. Winfred T. Denison on behalf of the United States, Mr. P. J. Farrell on behalf of the Interstate Commerce Commission and Mr. Luther M. Walter on behalf of the Railroad Commission of Louisiana. By oral agreement of counsel in open court made, petitioners were given leave to correct the petition in No. 67 by inserting on page 27, line 3 of section XI, after the figures "\$25,000" the words "of which \$20,000 will result from the reduction in the commodity rates". Petitioners were also granted leave to correct the amended petition in case No. 68 by inserting on page 26 of said amended petition at the end of the first paragraph of section XI, after the figures "\$812,700" the words "most of which will result from the reduction of the commodity rates". Thereupon the causes were taken under advisement by the Court.

230

Order.

Entered June 28, 1912.

In the United States Commerce Court, June Session, 1912.

Nos. 67 and 68.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY et al. and
TEXAS AND PACIFIC RAILWAY COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA et al., Respondents.

Order.

On motion of counsel for the intervening respondent, Railroad Commission of Louisiana, in open court made, the counsel for all of the parties being present and consenting thereto,

It is ordered. That the answers of the United States and the Interstate Commerce Commission to the original petition and the supplemental petition be and the same are hereby made to stand as the answers of the intervening respondent, the Railroad Commission of Louisiana.

By the Court:

MARTIN A. KNAPP,

Presiding Judge.

231

Opinion.

Filed April 25, 1913.

United States Commerce Court, June Session, 1912.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Railroad Commission of Louisiana, and St. Louis
Southwestern Railway Company et al., Interveners.*On Final Hearing.*

(For opinion of Interstate Commerce Commission, see 23 I. C. C.
Rep., 31.)

Mr. Henry G. Herbel, with whom Mr. Fred G. Wright was on
the brief, for the petitioner.

Mr. Winfred T. Denison, Assistant Attorney General, with whom

Mr. Thurlow M. Gordon, Special Assistant to the Attorney General, was on the brief, for the United States.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Luther M. Walter, with whom Mr. R. G. Pleasant, attorney general of Louisiana, and Mr. W. M. Barrow, assistant attorney general of Louisiana, were on the brief, for the Railroad Commission of Louisiana.

Before Knapp, Presiding Judge, and Hunt, Carland and Mack, Judges.

(April 25, 1913.)

KNAPP, Presiding Judge:

The question to be decided in this case has been so thoroughly discussed by the Commission, and kindred questions have been so fully considered in various cases recently decided or now pending in other courts, that little can be profitably said beyond a statement of our conclusions.

There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, La., to Dallas, Tex., and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner from Dallas to the same intermediate points in the State of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distance of 42 miles, is 56 cents per hundred pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges it is obvious that Shreveport is severely if not fatally handicapped in its competition with Dallas for the trade of the intervening territory, most of which is situated in the State of Texas. It appears that operating conditions are substantially the same throughout the entire line and in both directions between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded—and certainly no other inference is permissible—that the rate situation here in question would clearly constitute undue prejudice to Shreveport and undue preference to Dallas, within the meaning of the third section of the act, provided that section be applicable, if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the contention is made that as matter of law it is not and can not be undue, or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section can not be predicated upon a rate relation, however unjust, which is brought about, not by the voluntary action of the carrier, but by the command of a State which the carrier is constrained to obey.

In this suit the order of the Commission is sought to be set aside

only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner
 234 may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas commission, by imposing upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce, and thereby obstructed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such a result, whether intended or otherwise, is in derogation of the power and authority of Congress under the commerce clause of the Constitution.

The right of a State to control the movement of its internal commerce and the instrumentalities employed in such movement is not unlimited, as the Supreme Court has repeatedly declared. In the first case which involved the scope and meaning of the commerce clause, *Gibbons v. Ogden* (9 Wheat., 1), the line of demarkation between State and Federal power was defined by Chief Justice Marshall in the following language:

"It is not intended to say that these words (commerce among the States) comprehend that commerce which is completely internal, which is carried on between man and man in a State or between different parts of the same State, and which does not
 235 extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. * * * The genius and character of the whole Government seem to be, that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government." (Italics ours.)

This definition has been uniformly accepted and the language itself quoted with approval in a number of cases. *The Daniel Ball* (10 Wall., 557, 565); *The Lottery Cases* (188 U. S., 321, 346); *The First Employers' Liability Cases* (207 U. S., 463, 493). And quite recently, in *The Second Employers' Liability Cases* (223 U. S., 1, 54), Mr. Justice Van Devanter, after quoting to the same effect from *McCulloch v. Maryland* (4 Wheat., 426), remarks that "particularly apposite is the repetition of that principle in *Smith v. Alabama*" (124 U. S., 465, 473), where it is stated as follows:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is

conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."

In the light of these decisions, and many others of similar import, it seems clear to us that Congress is invested with ample power to prevent or remove such a discrimination as is here considered. This is not seriously disputed by petitioner, as we understand the position of counsel, but the contention is pressed that Congress has not exerted its power, even if the power be possessed, to the extent necessary to reach this particular kind of discrimination, and therefore the Commission's order should be set aside because in excess of its authority.

The power which Congress has exercised in this regard finds expression in the third section of the act to regulate commerce, as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It would be difficult to frame a more comprehensive and unqualified declaration. It applies to all interstate railroads and makes unlawful every act which operates to the undue prejudice of any locality. Taken by itself, and giving to the language used its natural significance, the paragraph quoted brings within its condemnation the rate adjustment here involved, because that adjustment as a matter of fact is obviously prejudicial to the shipping interests of Shreveport. And it would follow from this view of the section that the Commission had authority to correct the ascertained injustice by making the order sought to be enjoined. The opposing view is based upon two general grounds which present the real controversy in this case, and which will now be briefly examined.

In the first place, it is said that the provisions of the third section, above quoted, are to be read in connection with the proviso in the first section, and that this proviso defines and limits the power which Congress intended to exercise by expressly excluding transportation "wholly within one State." In other words, the proviso is claimed to be an exception which exempts from regulation under the act the rates on intrastate traffic, and therefore deprives the Commission of authority to found a violation of the statute upon the relation between State and interstate rates, no matter what may be the effect of that relation upon the movement of interstate traffic. The proviso reads as follows:

"Provided, however, that the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving,

delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

238 The intent and meaning of this proviso has been quite fully discussed by this court in *Denver & R. G. R. Co. v. Interstate Com. Com'n* (195 Fed., 968), and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates, not to the carriers, but to the transportation, and is therefore to be read in connection with the second clause of the section, and not with the first.

* * * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a carrier that confined its business to one State, and was not engaged in such interstate business as would bring it within the first clause, the proviso was added.

* * * * *

"The proviso, therefore, must be regarded as a disclaimer, and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain carriers, either by way of disclaimer or by way of exception.

* * * * *

"This construction gives consistent and appropriate meaning to those provisions of the first section which define the scope and application of the entire enactment. It sustains the act as a comprehensive scheme of regulation designed to include all interstate transportation wholly by railroad, or partly by railroad and partly by water when both are used under a common arrangement, and to exempt only that intrastate transportation which is not within the power of Congress to regulate."

239 Adhering to the views then expressed, which are summed up in the last paragraph quoted, we hold that this proviso is a mere disclaimer of any intention on the part of Congress, in enacting the act to regulate commerce, to exceed its constitutional power, and that it was not designed to limit or confine the power which Congress could exercise—and, in our opinion, has exercised—in respect of such matters as are here in dispute. If this construction be correct, it follows that the proviso in no way prevents the application of the third section to the facts of this case, and therefore it was within the authority of the Commission to make the order in question.

It is argued in the second place, as above stated, that the "undue preference" and "undue prejudice" which are declared unlawful by the third section of the act, as that section has been construed by the Supreme Court, can be predicated only upon the voluntary action of the carrier, and therefore the lower rates from Dallas than from Shreveport are not in violation of the third section, whatever may

be the resulting disadvantage to Shreveport shippers, because such lower rates are not voluntarily accorded but are imposed upon petitioner against its will by the Texas Commission.

This contention is based upon several decisions of the Supreme Court, particularly *East Tenn. &c. Ry. Co. v. Interstate Com. Com'n* (181 U. S., 1, and cases there cited), and attention is called
240 to a paragraph in the opinion in that case, page 18, in which the following language is used:

"The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers."

It will be observed that this case arose under the long and short haul clause of the original fourth section of the act and involved the meaning of the phrase "under substantially similar circumstances and conditions," which was eliminated by the amendment of 1910. The real question at issue was whether competition at the longer distance point constituted, or could constitute, a dissimilarity of circumstances and conditions which relieved the road serving the shorter distance point from the obligation imposed by the fourth section, and the Supreme Court answered that question in the affirmative. Examination of the opinion discloses clearly, as we think, that the convincing reason for this conclusion was the fact that the carrier complained of had not caused and was in no way responsible for the discrimination against the shorter distance locality. That discrimination, as was shown, resulted wholly from the lower rates accorded by independent carriers reaching the farther point by other and different routes; and accordingly it was held that the
241 carrier in question, if its rates to the nearer point were rea-

sonable, was not violating the act by meeting at a more remote point conditions there existing which it did not create and could not control. Manifestly the factor deemed decisive in that case is wholly absent from the case at bar, and therefore the ruling then made, notwithstanding the statement above quoted from the opinion, can not be accepted as sustaining petitioner's contention. Moreover, the administrative authority of the Commission has been materially increased by the amendments of 1906 and 1910, as the Supreme Court observed in the recent *Procter & Gamble* case (225 U. S., 282, 297), and it may be open to doubt whether decisions under the former fourth section would be followed in cases arising under the amended statute.

This of course does not meet the argument, based upon the different state of facts here presented, that petitioner is under compulsion as respects the State rates in question and therefore not chargeable with any violation of law because those rates are relatively much lower than its interstate rates from Shreveport. In the last analysis this claim of coercion would seem to beg the question to be decided, since it assumes that petitioner is bound at all events to observe the rates fixed by the Texas commission, although the order sought to be enjoined justifies the application of higher charges. But if the

action of the Texas commission regarding these intrastate rates is in derogation of the regulating power of Congress, the petitioner is not bound by that action, but has the right to readjust its
 242 schedules in conformity with the order of the Interstate Commerce Commission.

In the report upon which that order is based the Commission has found, upon convincing proofs therein recited, that the local rates here involved were imposed by the Texas commission for the purpose of favoring the industries and communities of that State. Indeed, the evidence is said "to demonstrate that Texas has a policy of her own with respect to the protection of home industry, which has been made effective by consistent and vigorous action on the part of her commission." And in this policy, as is further found, the petitioner and other carriers in like situation have apparently acquiesced. This plainly means, nor is it seriously disputed, that these Texas rates were prescribed not with reference to their intrinsic reasonableness, or on the basis of just compensation for the service rendered, but with the undisguised intention of giving preference and advantage to the dealers of that State as against their competitors in Louisiana and other States. As Commissioner Lane puts it, "the Texas commission is acting in loco parentis to the jobbing interests of Texas." It also means, as the record indicates, that the rates so established have been accepted by petitioner without more, at most, than a perfunctory protest.

In view of these uncontradicted facts we are constrained to reject the plea of compulsion, not merely or mainly because petitioner has assented to the protective policy of the Texas commission, but
 243 because that policy directly affects other States and the flow of commerce from those States, and thereby encroaches upon the field in which Federal authority is exclusive and supreme. To hold otherwise in this case is virtually to admit that the purpose of the Federal act may be thwarted and its operation made ineffective by the laws and administrative effort of the State of Texas. It is evident, as already stated, that these Texas rates were designed and have the necessary result of securing unjust and arbitrary advantage to the shippers for whom they were provided by restricting the movement of commodities from other States and measurably excluding outside dealers from competing for trade in Texas territory. The effect of this action by the Texas commission is not merely incidental and unimportant, but direct, substantial, and to an extent prohibitive. In our judgment it is a positive interference with interstate commerce, which Congress alone has power to regulate, and constitutes a violation of the law which Congress, in the exercise of its power, has duly enacted. The pervading purpose of that law was to prevent carriers subject to its provisions from indulging in unfair and burdensome discriminations against persons and localities engaged in interstate commerce. But if such a patent discrimination as this case discloses can not be reached because it is brought about by a State commission, the law fails in a most important respect to accomplish its wholesome purpose. Moreover, if one State commission may create and perpetuate such a discrimination, other
 244 State commissions may take similar action for similar reasons, with results which would greatly impair and indeed

largely defeat the effectiveness of Federal regulation. To say that conditions thus arising do not offend the Federal law and can not be corrected by the Commission appointed to administer that law is to say in effect that State authority is superior to Federal authority when they come in conflict, whereas the reverse proposition has been repeatedly and invariably affirmed by the Supreme Court of the United States.

It is not claimed that the precise question here presented has been passed upon by the Supreme Court, but in various decisions of that court principles have been laid down which seem to us clearly applicable if not controlling.

For example, in the Eubank case (184 U. S., 36), Mr. Justice Peckham uses the following language:

"We fully recognize the rule that the effect of a State constitutional provision or of any State legislation upon interstate commerce must be direct and not merely incidental and unimportant; but it seems to us that where the necessary result of enforcing the provision may be to limit or prohibit the transportation of articles from without the State to a point within it, or from a point within to a point without the state, interstate commerce is thereby affected, and may be thereby to a certain extent directly regulated, and in that event the effect of the provision is direct and important and not a mere incident."

Later, in the Pullman Company case (216 U. S., 65), Mr. Justice (now Chief Justice) White states certain propositions
245 which are said to be "so conclusively established by the previous decisions of this court as to be now beyond dispute."

Among them are these:

"A State may not exert its concededly lawful powers in such a manner as to impose a direct burden on interstate commerce.
* * *

"Even though a power exerted by a State, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And more recently, in *Southern Ry. Co. v. United States* (222 U. S., 23), affirming the validity of the safety appliance acts, Mr. Justice Van Devanter states the principle governing the question there considered, as follows:

"And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

This court also, in *Penn. R. Co. v. Interstate Com. Com'n* (193

246 Fed., 81), following the Illinois Central case (215 U. S., 452), upheld orders of the Commission relating to the distribution of coal cars in times of shortage. And in reply to the argument that the carrier could not comply with the orders in question without violating a statute of the State, we said:

"It may also be true that the enforcement of regulations in conformity with these orders, if applied to cars for intrastate as well as interstate shipments, would result in some conflict with the duties of petitioner under the laws of Pennsylvania, * * * but if this is or proves to be the case, it furnishes no ground for our interference, since Federal authority to the full extent that it may be exerted supersedes and limits State authority."

It is true that the laws and orders involved in these decisions pertain to the physical operation of interstate railroads and not to the relations between State and interstate rates; but in our opinion the underlying question is essentially the same in both classes of cases, and the doctrine of the supremacy of Federal authority should have the same controlling application in the latter as in the former. If State regulation under State laws, respecting such matters as safety appliances, car distribution and the like, must be subordinated to and may be virtually annulled by national regulation under the national laws now in force, there is even greater reason for asserting the sufficiency of the existing acts of Congress, and the authority of the tribunal by which they are administered, to remove such a palpably unjust and injurious discrimination in freight

247 charges as is here presented, although that discrimination is caused by the action of a State commission. This is not to interfere with any power of regulation which a State may rightfully exercise, which does not "affect other States," or materially impede the flow of commerce from one to another, but to give complete and adequate potency to the law which Congress has enacted in pursuance of its plenary and exclusive power to regulate commerce "among the several States." As is said by Sanborn, judge, in *Shepard v. Northern Pac. Ry. Co.* (184 Fed., 795), after referring to the *Eubank* case, *supra*:

"By the same mark, because it is a direct regulation of interstate commerce, the Nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the Nation by the Congress and its courts may affect and regulate intrastate commerce."

It is the duty of an interstate railroad so to adjust its schedules that all dependent shippers and communities, regardless of imaginary State lines which may divide them, shall be able to use its facilities on relatively equal terms; and the Interstate Commerce Commission, in our judgment, is empowered by the present law to enforce the performance of that duty as occasion may require. The necessity for uniform, comprehensive, and adequate regulation, especially urgent in the vital matter of rate regulations, compels assertion of the paramount authority of Congress

and the appropriate exercise of that authority in those provisions of the act which are leveled against unjust discriminations, wherever existing or however caused. Indeed, we see no escape from multiplied difficulties arising under our dual form of government, except by broadly defining the constitutional power of Congress and its exertion as manifested in the enactment of the present law, and by upholding the full application of that law to such controversies as the one here considered. We are therefore in accord with the views of Commissioner Lane, speaking for the majority of the Commission, as expressed in the following extracts from his report:

"An interstate carrier must respect the Federal law, and if it is also subjected to State law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a State commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana after years of endurance makes complaint to this body these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join.

* * * * *

249 "While the Texas Commission has evidenced a policy of home protection for its own State cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the State authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under State direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the Federal law which guards commerce 'among the States' against discrimination."

The Interstate Commerce Commission investigated the complaint filed with that body on behalf of the shippers and dealers of Shreveport. In its report of that investigation, and upon proofs that seem to permit no other conclusion, the Commission found the fact of unjust discrimination as alleged, and duly made an order requiring its removal. The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, and this in effect sanctioned the continuance of those rates. It is likewise a necessary inference from the report and order that the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty and has the right to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the only method of compliance which

250 would be just to both shipper and carrier.

When this order was made, upon the facts so ascertained

and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no longer under compulsion in respect to those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission therefore operated to release petitioner, as regards the intrastate rates in question, from the restraint imposed by the State of Texas; and thereupon petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficiently to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligations. Whether petitioner should have applied to the courts for relief in the premises, basing its application upon the Commission's order and the rights of petitioner thereunder, or could advance its Texas rates in the first instance, relying upon the order as a defense against any prosecution under Texas laws, is not for us to determine. It is sufficient to hold, as we do, that petitioner can not resist the order on the ground of involuntary action, because the effect of that order was an exemption of these intrastate rates from Texas authority.

251 As was suggested at the outset, the general question here involved has been presented in numerous cases, more or less closely allied, and is perhaps the most conspicuous and important subject of current litigation. In the course of that litigation every decision of possible bearing has been repeatedly cited and every opinion critically examined, whilst the ablest lawyers in briefs and at the bar have exhausted the resources of argument. We can add nothing to what has been so often said, and deem it unnecessary to extend the discussion. In our judgment the order in question was within the authority of the Commission and ought not to be set aside.

The petition will therefore be dismissed.

MACK, Judge, concurring:

I agree that an intrastate rate voluntarily established by the railroads may be the basis for an order of the Interstate Commerce Commission declaring such a rate to involve an undue prejudice as against an interstate rate and requiring that the two rates be equalized.

I fully agree also that Congress has the constitutional power and may by proper legislation grant to the Interstate Commerce Commission authority to prevent undue prejudice in interstate commerce resulting from a rate not in the true sense voluntary, and irrespective of whether it be interstate or intrastate.

In view, however, of the passage cited from *E. Ry. Co vs. Interstate Commerce Commission*, 181 U. S. 1, and of the decision
252 of this Court in *Atchison, T. & S. F. Ry. Co. v. U. S.*, 191 Fed. 856, now pending on appeal in the Supreme Court, I am of the opinion that the Interstate Commerce Commission under the

legislation now in force cannot base such an order upon a compelled rate, whether interstate or intrastate, and whether compelled by compulsion, by statute, by court decree or by the order of a commission.

In my judgment, the Texas state rates cannot be treated by the Interstate Commerce Commission as if they were absolutely null and void, even though upon direct attack in the State or Federal Courts they would be nullified and their enforcement permanently enjoined as infringing upon the exclusive power of the Federal government to regulate interstate commerce. In the absence of a judicial decree, temporarily or permanently suspending the force and effect of the Texas rates, the railroads would be compelled to obey them, just as the railroads and the public are required to observe interstate rates duly made and published by the railroads, even though they be such as would be set aside for unreasonableness, unjust discrimination, or undue prejudice on direct attack before the Interstate Commerce Commission.

The order of the Interstate Commerce Commission therefore gives only an apparent but not a real alternative, either to raise the Texas rates or to lower the interstate rates; in effect it compels the reduction of the interstate rates to a point far below what the commission itself considers a reasonable rate, at least until a court of competent jurisdiction shall have enjoined the enforcement of the Texas rates.

If the Texas rates here in question must necessarily be held to be involuntary and compelled, I should be of the opinion that the order of the Interstate Commerce Commission must be set aside.

Inasmuch however as there seems to be some basis, though slight, for the view that the failure of the railroads to attack the Texas rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be said to have been not compelled but voluntary in the sense of having been voluntarily assented to instead of having been actively attacked, and inasmuch as the conclusions of my brethren are based in part at least upon this view, I concur for this reason only in upholding the Commission's order.

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Final Decree.

Entered April 29, 1913.

In the United States Commerce Court, June Session, 1912.

No. 68.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Petitioner,
v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Railroad Commission of Louisiana, and St. Louis
Southwestern Railway Company et al., Interveners.

Final Decree.

This cause came on for final hearing at this session and was argued by counsel; and thereupon, upon consideration thereof, it was

ordered, adjudged and decreed that the petition be, and the same be hereby, dismissed at the cost of the petitioner.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

255 *Petition for Appeal.*

Filed May 12, 1913.

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Intervening Respondent; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, Intervening Petitioners.

Petition for Allowance of Appeal.

Now comes The Texas & Pacific Railway Company, Petitioner in the above entitled and numbered cause, and St. Louis, Southwestern Railway Company, St. Louis, Southwestern Railway Company of Texas, and Missouri, Kansas & Texas Railway Company of Texas, intervening petitioners, and, feeling aggrieved by the order and final decree of the Court entered herein on the 29th day of April, 1913, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignments of error filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

THE TEXAS & PACIFIC RAILWAY
COMPANY,

By HENRY G. HERBEL,
FRED G. WRIGHT,

Attorneys.

256 MISSOURI, KANSAS & TEXAS RAIL-
WAY COMPANY OF TEXAS,

By JOSEPH M. BRYSON,
ALEX S. COKE,

Attorneys.

ST. LOUIS, SOUTHWESTERN RAIL-
WAY COMPANY,

ST. LOUIS, SOUTHWESTERN RAIL-
WAY COMPANY OF TEXAS,

By S. H. WEST,
EDW. A. HAID,

Attorneys.

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Assignments of Error.

Filed May 12, 1913.

In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission, Intervening Respondent; J. J. Meredith, Shelby
Taylor, Henry B. Schreiber, Constituting the Railroad Commis-
sion of Louisiana; Missouri, Kansas & Texas Railway Company
of Texas, St. Louis Southwestern Railway Company, and St.
Louis Southwestern Railway Company of Texas, Intervening
Petitioners.*Assignments of Error.*

Comes now petitioner and intervening petitioners in the above
entitled cause and makes the following assignments of error to the
Order and Decree of the Court, to-wit:

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First.

The Court erred in dismissing the petition of The Texas &
Pacific Railway Company, petitioner herein, and the petitions of
Missouri, Kansas & Texas Railway Company of Texas, St. Louis
Southwestern Railway Company, and St. Louis Southwestern Rail-
way Company of Texas, intervening petitioners herein, and render-
ing final decree herein, sustaining and holding valid the order of
the Interstate Commerce Commission in Cause No. 3918, J. J. Mere-
dith, Shelby Taylor and Henry B. Schreiber, constituting the Rail-
road Commission of Louisiana, vs. St. Louis, Southwestern Rail-
way Company, et al., of date March 11, 1912, for that:

Said order of the Interstate Commerce Commission was and is
wholly invalid and void in that the Interstate Commerce Commis-
sion having therein held that the interstate commodity rates from
Shreveport, Louisiana, to the several Texas points in said order
mentioned, were in all things reasonable, the said Interstate Com-
merce Commission was without power, authority or jurisdiction to
order petitioner, The Texas & Pacific Railway Company, to equal-
ize rates imposed by the Railroad Commission of Texas between
points wholly within the State of Texas, so as to conform said
intrastate rates so made by and under the authority of the Railroad
Commission of Texas to the said interstate rates applicable from
Shreveport, Louisiana, to said points in Texas, mentioned, and said
Interstate Commerce Commission is without power, authority or
jurisdiction to compel petitioner to reduce reasonable interstate rates
to equalize same with lower intrastate rates installed by petitioner
under the compulsion of the order of the Railroad Commission of
Texas.

Second.

The Court erred in dismissing said petition and sustaining said Order of the Interstate Commerce Commission, for that:

The Interstate Commerce Commission is wholly without power, authority or jurisdiction under the Interstate Commerce Act, approved February 4, 1887, and Acts amendatory thereof, to make any valid order controlling, or seeking to control, rates wholly within the State of Texas by the Railroad Commission of Texas under and by virtue of valid laws of the State of Texas, duly authorizing it thereto.

Third.

The Court erred in dismissing said petition and sustaining the said order of the Interstate Commerce Commission, for that:

The Congress of the United States is wholly without power to enact any valid law controlling, or seeking to control, purely intrastate rates applicable to commerce moving wholly between points situated within the limits of the State of Texas and made by the Railroad Commission of Texas in pursuance of authority duly and legally conferred by the Constitution and laws of that State.

Fourth.

The Court erred in dismissing said petition and entering its final decree herein, sustaining the order of the Interstate Commerce Commission therein complained of, for that:

The uncontradicted evidence herein shows that the commodity rates complained of from Dallas towards Shreveport and from Houston towards Shreveport, applied wholly to points within the State of Texas; that said rates were duly ordered and installed by the Railroad Commission of Texas, which had full power to make and install the same under the Constitution and laws of the State of Texas; that petitioner and intervening petitioners, appellants herein, were forced under the compulsion of severe penalties, to apply the same, and petitioner and intervening petitioners are and were wholly without right, power or authority under said laws of the State of Texas, to apply between said points any other or different rates than the rates so prescribed by the Railroad Commission of Texas and the Interstate Commerce Commission having held in the order complained of that the commodity rates herein involved from Shreveport in the State of Louisiana, to said points in the State of Texas, were in and of themselves reasonable, petitioner and intervening petitioners, appellants herein, were and are wholly without power or authority to make or apply between said points in the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas and the Interstate Commerce Commission was and is wholly without power, authority or jurisdiction to compel petitioner and intervening petitioners, appellants herein, to install or apply between said points wholly within the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas,

Fifth.

The Court erred in dismissing the petition of The Texas & Pacific Railway Company and the petitions of the intervening petitioners herein and in sustaining the order of the Interstate Commerce Commission herein complained of, for that:

The Interstate Commerce Commission had no power or authority or jurisdiction to make any order on the petitioner or intervening petitioners herein requiring or compelling them to remove the discrimination found to exist by said Interstate Commerce Commission, said discrimination (if it be a discrimination) not being an undue or illegal discrimination, of which the Interstate Commerce Commission has, under Section 3 of the Act to Regulate Commerce or any other valid law of the United States, power, authority or jurisdiction to remove.

Wherefore, petitioner prays that said decree be reversed and that said United States Commerce Court be directed to enter a decree in accordance with prayers of your petitioner herein, cancelling said order of the Interstate Commerce Commission and permanently enjoining the enforcement thereof.

THE TEXAS & PACIFIC RAILWAY
COMPANY,

By HENRY G. HERBEL,
FRED G. WRIGHT,

Attorneys.

MISSOURI, KANSAS & TEXAS RAIL-
WAY COMPANY OF TEXAS,

By JOSEPH M. BRYSON,
ALEX S. COKE,

Attorneys.

ST. LOUIS SOUTHWESTERN RAIL-
WAY COMPANY,

ST. LOUIS SOUTHWESTERN RAIL-
WAY COMPANY OF TEXAS,

By S. H. WEST,
EDW. A. HAID,

Attorneys.

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Order Allowing Appeal.

Entered May 12, 1913.

In the United States Commerce Court.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Petitioner,
vs.UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION, Intervening Respondent; J. J. Meredith, Shelby
Taylor, and Henry B. Schreiber, Constituting the Railroad Com-
mission of Louisiana; Missouri, Kansas & Texas Railway Com-
pany of Texas, St. Louis Southwestern Railway Company, and
St. Louis Southwestern Railway Company of Texas, Intervening
Petitioners.

Order Allowing Appeal.

(Entered May 12, 1913.)

Prayer of the petitioner for an allowance of appeal in the above
entitled cause coming on to be heard, an appeal is hereby allowed
to the Supreme Court of the United States to review the order and
the final decree, dismissing petitioner's complaint hereinbefore en-
tered in this cause, and the cost bond is hereby fixed at One Thousand
Dollars (\$1,000.00.)

Dated this 12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

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Bond on Appeal.

Filed May 12, 1913.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
COMMISSION, Intervening Respondent; J. J. Meredith, Shelby
Taylor, and Henry B. Schreiber, Constituting the Railroad Com-
mission of Louisiana; Missouri, Kansas & Texas Railway Company
of Texas, St. Louis Southwestern Railway Company, and St.
Louis Southwestern Railway Company of Texas, Intervening Pe-
titioners.

Know all men by these presents, That we, the Texas & Pacific
Railway Company, Missouri, Kansas & Texas Railway Company of

Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, as principals, and the Massachusetts Bonding and Insurance Company, a Corporation of the State of Massachusetts, as surety, are held and firmly bound unto the United States of America, the Interstate Commerce Commission, and to J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, in the sum of one thousand dollars (\$1,000.00) to be paid to the United States of America, the Interstate Commerce Commission, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana. We bind ourselves and each of our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of May, A. D. 1913.

264 Whereas, heretofore to-wit: on the 29th day of April, 1913, in a suit pending in the United States Commerce Court and numbered No. 68 on the docket of said Court, wherein the Texas & Pacific Railway Company was petitioner and United States of America was respondent, and the Interstate Commerce Commission was intervening respondent, and the Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, were intervening petitioners, an order, judgment and decree was rendered against said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, dismissing the petition of said The Texas & Pacific Railway Company, and taxing the costs of said suit against said The Texas & Pacific Railway Company, petitioner, and

Whereas said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, have appealed from said order and decree to the Supreme Court of the United States and have obtained citation directed to said United States of America, said Interstate Commerce Commission, said J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington within thirty days from the allowance of said appeal;

Now the condition of the above obligation is such that, if the said The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis, Southwestern Railway Company, and St. Louis, Southwestern Railway Company of Texas, shall prosecute their said appeal to effect and shall pay all costs if they shall fail to make their said plea good, then the above

265 obligation to be void; otherwise, to remain in full force and effect.

THE TEXAS & PACIFIC RAIL-
WAY COMPANY,
By HENRY G. HERBEL,
FRED G. WRIGHT,
Attorneys.

MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY OF TEXAS,
By JOSEPH M. BRYSON,
ALEX S. COKE,
Attorneys.

ST. LOUIS, SOUTHWESTERN RAIL-
WAY COMPANY,
ST. LOUIS, SOUTHWESTERN RAIL-
WAY COMPANY OF TEXAS,
By S. H. WEST,
EDW. A. HAID,
Attorneys.

MASSACHUSETTS BONDING AND
INSURANCE COMPANY,
By LEE B. MOSHER,
Attorney in Fact.

[Seal of Massachusetts Bonding & Insurance Company.]

The above and foregoing bond approved and ordered filed this
12th day of May, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge.

266 In the United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE
Commission; J. J. Meredith, Shelby Taylor, and Henry B. Schrei-
ber, Constituting the Railroad Commission of Louisiana; Missouri,
Kansas & Texas Railway Company of Texas, St. Louis South-
western Railway Company, and St. Louis Southwestern Railway
Company of Texas.

Præcipe for Record.

(Filed May 12, 1913.)

To the Clerk of the United States Commerce Court:

You will please prepare a transcript of the record in the above
entitled cause to be filed in the office of the Clerk of the Supreme

Court of the United States upon the appeals from the final order and decree of the Commerce Court entered April 29, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

1. Petition and amended petition, with exhibits, of The Texas & Pacific Railway Company.
2. Intervening petition of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.
3. Intervening petition of Railroad Commission of Louisiana.
4. Orders of Commerce Court permitting interventions.
5. Answer of Interstate Commerce Commission to petition of The Texas & Pacific Railway Company.
6. Answer of Interstate Commerce Commission to intervening petition of St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.
- 267 7. Answer of United States to petition of The Texas and Pacific Railway Company.
8. Order of Commerce Court allowing answers of Interstate Commerce Commission and United States to petitions of original petitioner and intervening petitioners to stand as answers of Railroad Commission of Louisiana.
9. Final decree of United States Commerce Court.
10. Opinion of United States Commerce Court.
11. Petition for appeal and allowance of appeal; assignments of error; bond for appeal, and order approving same; citation on appeal to United States, Interstate Commerce Commission and Railroad Commission of Louisiana.

HENRY G. HERBEL,
Attorney for Appellants.

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United States Commerce Court.

No. 68.

THE TEXAS & PACIFIC RAILWAY COMPANY, Petitioner,
vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission; Railroad Commission of Louisiana; Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, Interveners.

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 267 inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the office of the Clerk of said Court on the 12th day of May, A. D. 1913, as the same appear from the original record in the Clerk's Office of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 19th day of May, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk*.

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Citation on Appeal.

Filed United States Commerce Court. May 12, 1913. G. F. Snyder, Clerk.

UNITED STATES OF AMERICA, *ss*:

To United States of America, Interstate Commerce Commission; J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, Constituting the Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas are appellants and you are appellees, to show cause, if any there be, why the final order or decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court this 12th day of May, 1913.

MARTIN A. KNAPP,

Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 12th day of May, 1913.

BLACKBURN ESTERLINE,

Special Assistant to the Attorney

General, for the United States.

P. J. FARRELL, *For Int. Com. Com.*

L. M. WALTER,

For R. R. Com. of Louisiana.

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Endorsed on cover: File No. 23,713. U. S. Commerce Court. Term No. 568. The Texas & Pacific Railway Company et al., appellants, vs. The United States, The Interstate Commerce Commission et al. Filed May 22d, 1913. File No. 23,713.



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1857



In The Supreme Court of The United States

No. _____

HOUSTON, EAST & WEST TEXAS RAILWAY
COMPANY,

HOUSTON & SHREVEPORT RAILROAD COMPANY, et al.,
Appellants,

vs.

THE UNITED STATES, et al.,
Appellees.

MOTION TO ADVANCE

To the Honorable, the Supreme Court of the United States:

Herein comes appellants, Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas, appellants herein, and move the court that this cause be advanced and set down for hearing herein at such early date as may to the court seem proper and for cause say,

1. That this cause is of large public interest, in that

it involves the right and power of the Interstate Commerce Commission to directly control freight rates purely intrastate made and installed by the Railroad Commission of Texas which has power under the constitution and laws of that state to initiate, install and enforce freight rates upon all commodities moving in intrastate commerce between points wholly within the state.

2. That on or about the 8th day of March, 1911, the Railroad Commission of Louisiana filed its complaint with the Interstate Commerce Commission against your petitioners, appellants herein, and other railway carriers engaged in state and interstate commerce complaining that, among other things, the City of Shreveport was discriminated against by said carriers, in that the rates on all classes and commodities of freight from Shreveport, La., to certain points within the State of Texas described in said complaint, were unreasonable in and of themselves and that they were discriminatory, in violation of the third section of the Act to Regulate Commerce, in that the rates on said classes and commodities of freight from the cities of Dallas and Houston within the State of Texas to points also within said state were lower for equal distances than rates over the lines of said carriers from Shreveport to points within the State of Texas; that due notice having been had, appellants, respondents in said proceedings, answered denying that the rates complained of were unreasonable in themselves and averring that the rates from Dallas and Houston to points within the State of Texas in the direction of Shreveport were in fact lower than the rates on like

classes and commodities for equal distances from Shreveport into Texas; that nevertheless, the said rates applicable from said cities of Houston and Dallas to points wholly within the State of Texas were not voluntarily installed by respondents and appellants herein, but were installed by the Railroad Commission of Texas which under the constitution and laws of that state has the sole authority to initiate and install rates, and that appellants herein and respondents in said proceeding were forced under the compulsion of severe penalties to comply with the orders of the Railroad Commission of said state and to install and apply the rates complained of; that said rates being thus compelled by the action of the Railroad Commission of Texas were not voluntary rates and could not therefore be held to be discriminative under the provisions of Section 3 of the Act to Regulate Commerce; that thereafter evidence having been duly adduced and full hearing and argument had thereon, the Interstate Commerce Commission on the 11th day of March, 1912, by order and opinion of date March 11, 1912, for which opinion see 23 I. C. C. R. p. 31, held: First, that the class rates from Shreveport to the several points in said opinion and order mentioned were unreasonable per se and ordered respondents and appellants herein to reduce said class rates to the amounts indicated in said opinion; second, that while the commodity rates complained of were not unreasonable per se, that they were unduly discriminative under the third section of the Act to Regulate Commerce, in that the purely intrastate commodity rates from Dallas and Houston in the

direction of Shreveport were upon the same commodities and for equal distances lower than the interstate rates from Shreveport in the direction of said two cities and appellants, Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company and the Texas & Pacific Railway Company were ordered to install commodity rates from Shreveport to the several points in Texas mentioned that were not in excess of the intrastate rates from Dallas and Houston in the direction of Shreveport for equal distances; that said opinion and order was rendered and made by a divided Commission, four members of said body being in favor thereof and three filing opinions dissenting therefrom; that said order by its terms became effective May 15, 1912; that thereafter and within the time allowed by law, appellants, Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company filed their petition in the Commerce Court of the United States seeking to cancel and annul said order and to permanently enjoin the enforcement thereof; that thereafter the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas, upon due order of court permitting the same, intervened in said cause alleging that while said order did not run against them that by reason of competitive conditions, it directly affected their rights and revenues and thereafter the Railroad Commission of Louisiana and the Interstate Commerce Commission intervened in said cause seeking to support said order; that the

Interstate Commerce Commission having held upon the facts that the class rates in its said order mentioned were unreasonable per se, petitioners and intervening petitioners, appellants herein, abandoned in said cause any attack upon that portion of said order applicable to said class rates, presenting to the United States Commerce Court for determination the sole issue as to whether the Interstate Commerce Commission having found that the commodity rates complained of were not unreasonable per se, purely intrastate rates forced upon appellants herein by the orders of the Railroad Commission of Texas and not voluntarily installed by appellants, petitioners in said court, were unduly and illegally discriminative under the third section of the Act to Regulate Commerce, and whether the Interstate Commerce Commission had authority or jurisdiction under the Act to Regulate Commerce to compel the removal of said discrimination; that the order of the Interstate Commerce Commission as to said class rates became effective upon May 15, 1912, but that portion of said order relative to the commodity rates and here involved was suspended from time to time until the rendition of the opinion of the United States Commerce Court should be rendered herein, the last effective date of said order being May 15, 1913; that heretofore to-wit: On the 29th day of April 1913, the said United States Commerce Court made and entered its decree, after full hearing and argument thereon, dismissing the bill of petitioners and in all things sustaining the order of the Interstate Commerce Commission complained of and petitioners

in said court, appellants herein, having duly prayed for same obtained an appeal from said decree of the United States Commerce Court to this Honorable Court and said appeal having been duly perfected, the record of said cause has been duly filed herein, said cause docketed and appearances entered, the same stands in this court for final submission; that after the rendition of said decree of the United States Commerce Court herein appealed from, and prior to the effective date of that portion of the order of the Interstate Commerce Commission herein sought to be canceled and enjoined, the Interstate Commerce Commission by order of date May 14, 1913, further suspended the effective date thereof with the understanding and agreement upon the part of petitioners that application to advance the hearing of this appeal should be made and final determination hereof had with such expedition as to this Honorable Court may seem proper.

3. Petitioners aver that this cause involves the determination of issues of grave public import, in this, that it involves the right of the duly constituted authorities of the sovereign State of Texas to make, install and compel obedience, upon the part of carriers engaged both in state and interstate commerce, to freight rates upon commodities moving between points wholly within the State of Texas and constituting purely intrastate commerce and it involves the right of the Interstate Commerce Commission, assuming to act under provisions of Section 3 of the Act to Regulate Commerce, to regu-

late purely intrastate rates made by a state rate-making body duly authorized thereunto by the constitution and laws of the state, and to compel carriers engaged in both state and interstate commerce to equalize reasonable interstate rates with rates purely intrastate not voluntarily installed by said carriers, but installed and enforced by the state rate-making authority, obedience to which is compelled by severe penalties accruing both to individuals and to the state in case of any departure upon the part of the carrier from said rates.

4. Petitioners aver that the demand of the Railroad Commission of Louisiana, as stated by the majority opinion of the Interstate Commerce Commission was that the Interstate Commerce Commission establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded to Texas competitors of Shreveport interests in the same line of business for the same distances, and that the majority of said Interstate Commerce Commission, by its order sustained by a decree of the United States Commerce Court herein appealed from, sustains the right of the Interstate Commerce Commission to measure a reasonable interstate rate by rates purely intrastate, and distinctly and clearly sustains the power of said Interstate Commerce Commission to control and set aside rates purely intrastate made by the Railroad Commission of Texas with full authority thereto under the constitution and laws of said state, and orders appellants herein at the peril of the infliction of severe penalties accruing to both the State of Texas and

to individual shippers, to disregard the purely intrastate so made by the Railroad Commission of Texas and conform the same to rates ordered and approved by the Interstate Commerce Commission; that as shown by the dissenting opinions of Commissioners Harlan, Clements and McChord, said order of the Interstate Commerce Commission is in direct conflict with the prior orders and decisions of the Interstate Commerce Commission and as will be shown upon hearing hereof by your petitioners is in conflict with the weight of judicial authority.

5. Petitioners further aver that by reason of the great extent of the coast line of the State of Texas, its numerous ports of entry and its peculiar situation relative to interstate traffic, a great portion of the rates made by the Railroad Commission of Texas have a direct and immediate effect upon interstate and foreign commerce; and that inasmuch as carriers engaged in both state and interstate commerce are not allowed under the laws of the State of Texas to depart in any particular from the intrastate rates made by said Railroad Commission of Texas, it is a matter of grave and immediate importance that the relative authorities and jurisdictions of the Interstate Commerce Commission and the Railroad Commission of Texas involved in this cause be speedily determined.

6. Petitioners would further state that if, in order to comply with the order of the Interstate Commerce Commission herein involved, they should undertake to equalize their intrastate rates condemned by said order

and thus depart from the scale of rates installed by the Railroad Commission of Texas that they and each of them would be exposed to prosecutions at the hand of the State of Texas for severe and confiscatory penalties and by suits for severe penalties by each individual shipper, each shipment constituting under the laws of said state a separate offense.

Wherefore petitioners move that this cause be advanced and set down for hearing at such early day as may to this Honorable Court seem proper.

Respectfully submitted,

HOUSTON EAST & WEST TEXAS RAIL-
WAY COMPANY,

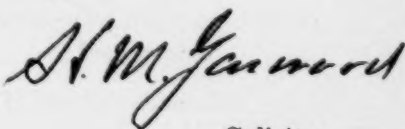
HOUSTON & SHREVEPORT RAILROAD
COMPANY,

MISSOURI, KANSAS & TEXAS RAIL-
WAY COMPANY OF TEXAS,

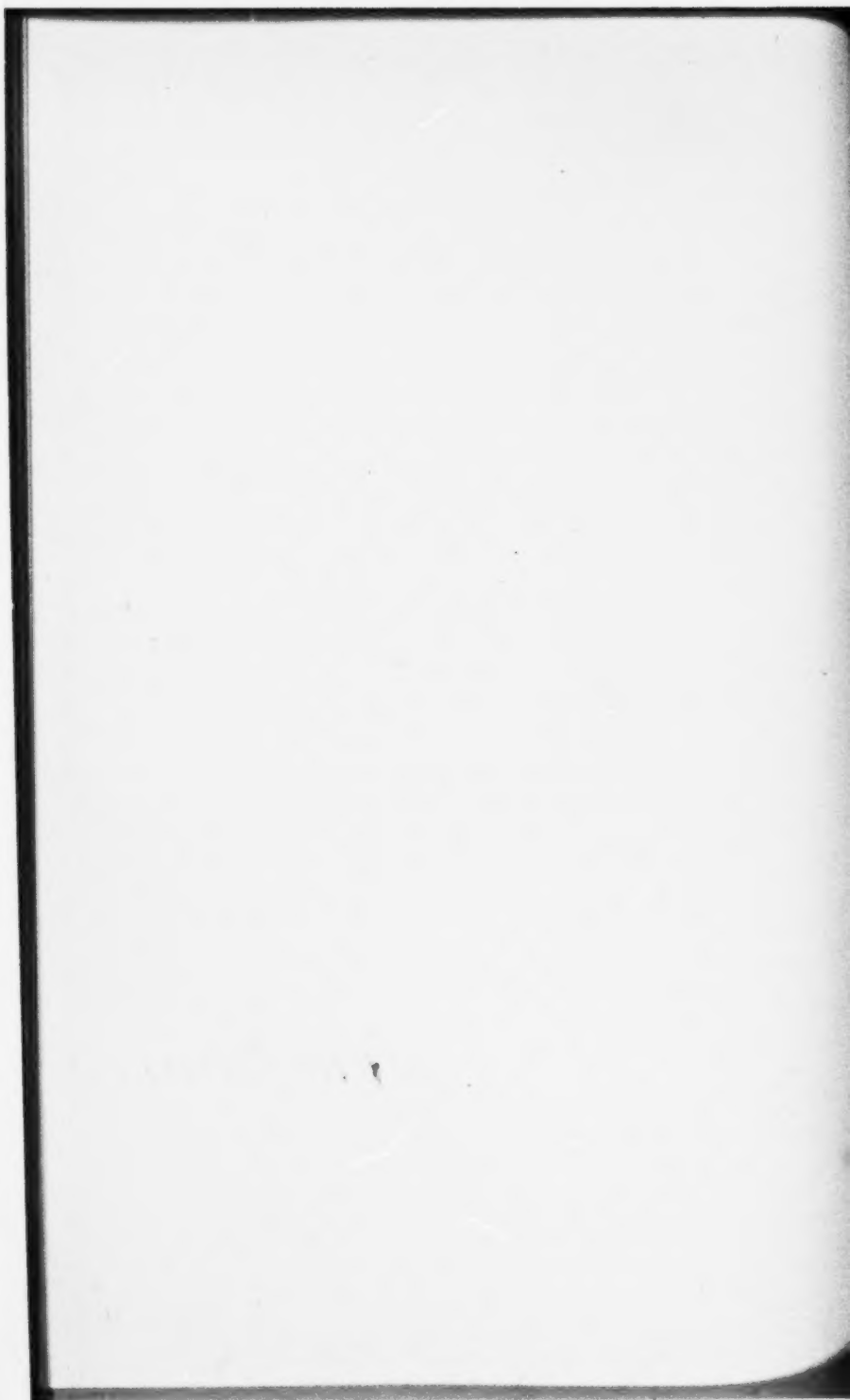
ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,

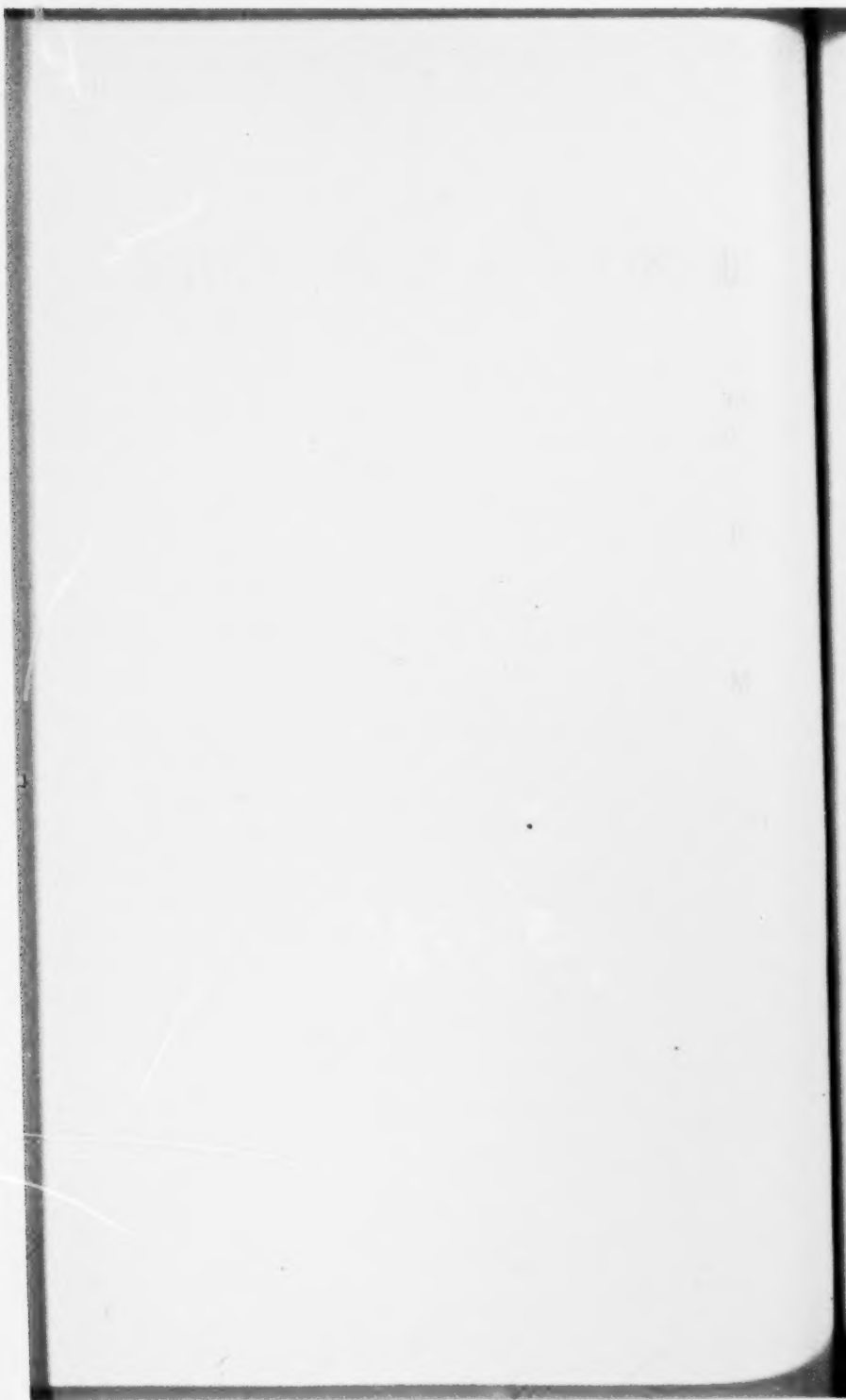
ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY OF TEXAS.

By

A handwritten signature in dark ink, appearing to read "S. M. Garrison". The signature is written in a cursive style with a large, sweeping "S" and "G".

Solicitor.





IN THE
SUPREME COURT OF THE UNITED STATES.

THE TEXAS & PACIFIC RAILWAY
COMPANY et al.,

Appellants,

No. _____.

vs.

THE UNITED STATES et al.,

Appellees.

MOTION OF APPELLANTS TO ADVANCE CAUSE.

To the Honorable, the Supreme Court of the United States:

Herein come appellants, The Texas & Pacific Railway Company, Missouri, Kansas & Texas Railway Company of Texas, St. Louis Southwestern Railway Company and St. Louis Southern Railway Company of Texas, appellants herein, and move the Court to advance this cause and set it down for hearing at such early date as may to the Court seem proper, and for cause say:

1. That this cause is of large public interest, in that it involves the right and power of the Interstate Commerce Commission to directly control freight rates

purely intrastate, made and installed by the Railroad Commission of Texas, which has power under the Constitution and laws of that State to initiate, install and enforce freight rates upon all commodities moving in intrastate commerce between points wholly within the State.

2. That on or about the 8th day of March, 1911, the Railroad Commission of Louisiana filed its complaint with the Interstate Commerce Commission against your petitioners, appellants herein, and other railway carriers engaged in state and interstate commerce, complaining that, among other things, the City of Shreveport was discriminated against by said carriers, in that the rates on all classes and commodities of freight from Shreveport, La., to certain points within the State of Texas described in said complaint, were unreasonable in and of themselves and that they were discriminatory, in violation of the third section of the Act to Regulate Commerce, in that the rates on said classes and commodities of freight from the cities of Dallas and Houston, within the State of Texas, to points also within said state were lower for equal distances than rates over the lines of said carriers from Sheveport to points within the State of Texas; that due notice having been had, appellants (respondents in said proceeding), answered, denying that the rates complained of were unreasonable in themselves and averring that the rates from Dallas and Houston to points within the State of Texas in the direction of Shreveport were, in fact, lower than the rates on like classes and commodities for equal distances from Shreveport into Texas; that, nevertheless, the said rates applicable from said cities of Houston and Dallas to points wholly within the State of Texas were not

voluntarily installed by respondents and appellants herein, but were installed by the Railroad Commission of Texas, which, under the Constitution and laws of that state, has the sole authority to initiate and install rates, and that appellants herein and respondents in said proceeding were forced under the compulsion of severe penalties to comply with the orders of the Railroad Commission of said state and to install and apply the rates complained of; that said rates being thus compelled by the action of the Railroad Commission of Texas were not voluntary rates and could not therefore be held to be discriminative under the provisions of Section 3 of the Act to Regulate Commerce; that thereafter evidence having been duly adduced and full hearing and argument had thereon, the Interstate Commerce Commission on the 11th day of March, 1912, by order and opinion of date March 11, 1912, for which opinion see 23 I. C. C. R., p. 31, held, first, that the class rates from Shreveport to the several points in said opinion and order mentioned were unreasonable *per se*, and ordered respondents and appellants herein to reduce said class rates to the amounts indicated in said opinion. Second, that while the commodity rates complained of were not unreasonable *per se*, that they were unduly discriminative under the third Section of the Act to Regulate Commerce, in that the purely intrastate commodity rates from Dallas and Houston in the direction of Shreveport were upon the same commodities and for equal distances lower than the interstate rates from Shreveport in the direction of said two cities and appellants, The Texas & Pacific Railway Company, and the Houston, East & West Texas Railway Company, and Houston & Shreveport Rail-

road Company, were ordered to install commodity rates from Shreveport to the several points in Texas mentioned that were not in excess of the intrastate rates from Dallas and Houston in the direction of Shreveport for equal distances; that said opinion and order were rendered and made by a divided Commission, four members of said body being in favor thereof and three filing opinions dissenting therefrom; that said order by its terms became effective May 15, 1912; that thereafter and within the time allowed by law appellant, The Texas & Pacific Railway Company, filed its petition in the Commerce Court of the United States, seeking to cancel and annul said order and to permanently enjoin the enforcement thereof; that thereafter the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas, upon due order of Court permitting the same, intervened in said cause, alleging that while said order did not run against them, that by reason of competitive conditions it directly affected their rights and revenues, and thereafter the Railroad Commission of Louisiana and the Interstate Commerce Commission intervened in said cause seeking to support said order; that the Interstate Commerce Commission having held upon the facts that the class rates in its said order mentioned were unreasonable *per se*, petitioner and intervening petitioners, appellants herein, abandoned in said cause any attack upon that portion of said order applicable to said class rates presenting to the United States Commerce Court for determination the sole issue as to whether the Interstate Commerce Commission, having found that the commodity rates complained of were not unreasonable *per se* the purely

intrastate rates forced upon appellants herein by the orders of the Railroad Commission of Texas and not voluntarily installed by appellants, petitioners in said court were unduly and illegally discriminative under the third section of the Act to Regulate Commerce, and whether the Interstate Commerce Commission had authority or jurisdiction under the Act to Regulate Commerce to compel the removal of said discrimination; that the order of the Interstate Commerce Commission as to said class rates became effective May 15, 1912, but that portion of said order relative to the commodity rates and here involved was suspended from time to time until the rendition of the opinion of the United States Commerce Court herein, the last effective date of said order being May 15, 1913; that heretofore, to-wit, on the 29th day of April, 1913, the said United States Commerce Court made and entered its decree, after full hearing and argument thereon, dismissing the bill of petitioners and in all things sustaining the order of the Interstate Commerce Commission complained of, and petitioners in said court, appellants herein, having duly prayed for and obtained an appeal from said decree of the United States Commerce Court to this Honorable Court, and said appeal having been duly perfected, the record of said cause has been duly filed herein, said cause docketed and appearances entered, the same stands in this Court for final submission; that after the rendition of said decree of the United States Commerce Court herein, appealed from and prior to the effective date of that portion of the order of the Interstate Commerce Commission herein sought to be canceled and enjoined, the Interstate Commerce Commission, by order of date May 14, 1913, further suspended the effective date

thereof with the understanding and agreement upon the part of appellants that application to advance the hearing of this appeal should be made and final determination hereof had with such expedition as to this Honorable Court may seem proper.

3. Appellants aver that this cause involves the determination of issues of grave import. In this, that it involves the right of the duly constituted authorities of the sovereign State of Texas to make, install and compel obedience upon the part of carriers engaged both in state and interstate commerce to freight rates upon commodities moving between points wholly within the State of Texas and constituting purely intrastate commerce, and it involves the right of the Interstate Commerce Commission, assuming to act under the provisions of Section 3 of the Act to Regulate Commerce, to regulate purely intrastate rates made by a state rate-making body duly authorized thereunto by the Constitution and laws of the state and to compel carriers engaged in both state and interstate commerce to equalize reasonable interstate rates with rates purely intrastate not voluntarily installed by said carriers, but installed and enforced by the state rate-making authority, obedience to which is compelled by severe penalties accruing both to individuals and to the state in case of any departure upon the part of the carrier from said rates.

4. Appellants aver that the demand of the Railroad Commission of Louisiana, as stated by the majority opinion of the Interstate Commerce Commission, was that the Interstate Commerce Commission establish the same basis of rates of transportation between Shreveport and East Texas points as are accorded by Texas competitors of Shreveport interests in the same line

of business for the same distances, and that the majority of said Interstate Commerce Commission, by its order sustained by the decree of the United States Commerce Court herein appealed from, sustains the right of the Interstate Commerce Commission to measure a reasonable interstate rate by rates purely intrastate and distinctly and clearly sustains the power of said Interstate Commerce Commission to control and set aside rates purely intrastate made by the Railroad Commission of Texas, with full authority thereto under the Constitution and laws of said state, and orders appellants herein at the peril of the infliction of severe penalties accruing to both the State of Texas and to individual shippers to disregard the purely intrastate rates so made by the Railroad Commission of Texas and conform the same to rates ordered and approved by the Interstate Commerce Commission; that as shown by the dissenting opinions of Commissioners Harlan, Clements and McChord, said order of the Interstate Commerce Commission is in direct conflict with the prior orders and decisions of the Interstate Commerce Commission, and as will be shown upon hearing hereof by appellants is in conflict with the weight of judicial authority.

5. Appellants further aver that by reason of the great extent of the coast line of the State of Texas, its numerous ports of entry and its peculiar situation relative to interstate traffic a great portion of the rates made by the Railroad Commission of Texas have a direct and immediate effect upon interstate and foreign commerce; and that inasmuch as carriers engaged in both state and interstate commerce are not allowed under the laws of the State of Texas to depart in any particular from the intrastate rates made by said Railroad

Commission of Texas, it is a matter of grave and immediate importance that the relative authorities and jurisdictions of the Interstate Commerce Commission and the Railroad Commission of Texas involved in this cause be speedily determined.

6. Appellants further state that if in order to comply with the order of the Interstate Commerce Commission herein involved they should undertake to equalize their intrastate rates condemned by said order and thus depart from the scale of rates installed by the Railroad Commission of Texas they and each of them would be exposed to prosecutions at the hand of the State of Texas for severe penalties and by suits for severe penalties by each individual shipper, each shipment constituting under the laws of said state a separate offense.

7. Appellants further state that under Section 2 of the Act of Congress creating the Commerce Court, appeals of this character are entitled to "priority in hearing and determination over all other causes except criminal causes" in this court.

Wherefore, appellants pray that this cause be ad-

vanced and set down for hearing at such early day as may to this Honorable Court seem proper.

THE TEXAS & PACIFIC RAILWAY COMPANY.

By HENRY G. HERBEL and

FRED G. WRIGHT,

Its Solicitors.

MISSOURI, KANSAS & TEXAS RAILWAY

COMPANY OF TEXAS,

By JOSEPH M. BRYSON and

ALEX S. COKE,

Its Solicitors.

ST. LOUIS SOUTHWESTERN RAILWAY

COMPANY, and

ST. LOUIS SOUTHWESTERN RAILWAY

COMPANY OF TEXAS,

By S. H. WEST and

EDW A. HAID,

Their Solicitors.

FILED

SEP 15 1913

JAMES H. HENRY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1913

No. 567

HOUSTON EAST & WEST TEXAS RAILWAY COMPANY,
AND HOUSTON & SHREVEPORT RAILROAD COM-
PANY ET AL., *Appellants,*

VERSUS

THE UNITED STATES, THE INTERSTATE COMMERCE
COMMISSION ET AL., *Appellees.*

Appeal from the United States Commerce Court.

BRIEF FOR APPELLANTS

BY

MAXWELL EVARTS,

JAMES C. WILSON,

HIRAM M. GARWOOD,

Attorneys for Appellants.

BAKER, BOTTS, PARKER & GARWOOD
Of Counsel.

CHAS. HILLIARD & YOUNG, DISTRICT CLERK

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In the
Supreme Court of the United States
October Term, 1913.

No. 567.

HOUSTON EAST & WEST TEXAS RAILWAY COMPANY,
AND HOUSTON & SHREVEPORT RAILROAD COM-
PANY ET AL., *Appellants*,

VS.

THE UNITED STATES, THE INTERSTATE COMMERCE
COMMISSION ET AL., *Appellees*.

Appeal from the United States Commerce Court.

BRIEF FOR APPELLANTS

This cause involves an appeal from a decree of the United States Commerce Court, of date April 25th, 1913, dismissing bill for injunction filed by appellants to restrain the enforcement of an order of the Interstate Commerce Commission.

On the 8th day of March, 1911, the Railroad Commission of Louisiana filed a petition with the Interstate Commerce Commission against the Houston East & West Texas Railway Company, the Houston & Shreveport Rail-

road Company, the St. Louis & Southwestern Railway Company, the St. Louis & Southwestern Railway Company of Texas, the Eastern Texas Railway Company, the Missouri, Kansas & Texas Railway Company of Texas, the Texas & Pacific Railway Company, the Gulf, Colorado & Santa Fe Railway Company, and the International & Great Northern Railroad Company, complaining that these carriers discriminated in the rates carried on the various classes and commodities of traffic from Shreveport to Texas, in that the rates charged by the carriers from Texas distributing centers, such as Houston, Dallas and other points, in the direction of Shreveport, to points within the State of Texas, the trade of which was in competitive territory between such Texas distributing centers and Shreveport, were less for equal distances than the rates carried by such carriers on the same classes and commodities from Shreveport to such Texas competitive points, and that the Texas intrastate rates applied between such Texas points were less under substantially similar conditions than the interstate rates from the city of Shreveport, in the State of Louisiana, to such competitive points. The prayer of the complainants was that the Interstate Commerce Commission establish the same basis of rates of transportation between Shreveport and east Texas points as was accorded by the defendants to Texas competitors of Shreveport interests in the same line of business for the same distance. Complaint was also made that the interstate rates from Shreveport to such Texas points were unreasonably high. The Interstate Commerce Commission, after due and regular hearing, made its report and order upon this complaint on March 11th, 1912 (see 23 I. C. C., page 31),

(Tr., 19-60.) It was found therein that the class rates complained of out of Shreveport to the points on the Texas & Pacific mentioned in the order, and to points on the Houston East & West Texas Railway and the Houston & Shreveport Railroad, were unjust and unreasonable, and an order was made fixing reasonable rates on the several classes for the several stations on the Texas & Pacific Railway from Shreveport to Orphans Home, Texas, and from Shreveport, on the Houston East & West Texas Railway, to Houston, Texas. It was not found that the commodity rates complained of from Shreveport to the several Texas points were unreasonable, and the order of the Interstate Commerce Commission with regard to the commodity rates is based solely upon the proposition that the Texas intrastate rates applied by the carriers to and from Dallas, Houston and other distributing centers, to the points within the State of Texas, are less for substantially similar distances than the interstate rates from Shreveport to said points, and that thereby the intrastate Texas rates applied by the carriers are discriminative as against the interstate rates. The order of the Interstate Commission, which runs only against the Texas & Pacific Railway Company, the Houston East & West Texas Railway Co., and the Houston & Shreveport Railroad (Tr., 57-60) held that the class rates complained of were unreasonably high, and prescribed reasonable rates. As stated, the commodity rates complained of were not found to be unreasonable *per se*, but the Texas & Pacific Railway Company, the Houston East & West Texas Railway Company, and the Houston & Shreveport Railroad Company, were required, on or before the 1st day of May, 1912, and for a period of not

less than two years thereafter, to cease and desist from exacting any higher rates for the transportation of any article from Shreveport, Louisiana, to Dallas, Texas, and points on the Texas & Pacific Railway intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Texas, towards Shreveport, for an equal distance. And from exacting any higher rates for the transportation of any article from Shreveport, Louisiana, to Houston, Texas, and points on the line of the Houston East & West Texas Railway and the Houston & Shreveport Railroad intermediate thereto, than are contemporaneously exacted for the transportation of such articles from Houston, Texas, towards Shreveport, for an equal distance. The effective date of this order has been suspended from time to time as to the commodity rates complained of, and is still under suspension, but the order, in so far as it applied to the class rates, became effective May 1st, 1912, and is not here involved.

Separate suits to enjoin this order were filed by appellants, Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company and Texas & Pacific Railway Company in the United States Commerce Court. The Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company, and St. Louis & Southwestern Railway Company of Texas, intervened, and were made parties to the suit filed by appellants Houston East & West Texas Railway and Houston & Shreveport Railroad Company, and are parties to this appeal.

While the bill for injunction against the order of the Interstate Commerce Commission (Tr., 1-65) attacked

the entire order of the Commission, both as to the class rates and the commodity rates, the attack upon the class rates was abandoned. The Interstate Commerce Commission having found as a conclusion of fact that these rates were unreasonable, the proceedings before the United States Commerce Court were confined to an attack upon the order of the Interstate Commerce Commission, in so far only as it applied to the commodity rates. The order complained of finds that while the interstate commodity rates from Shreveport to the competitive Texas territory between Shreveport and Dallas on the line of the Texas & Pacific Railway, and between Shreveport and Houston on the line of the Houston East & West Texas Railway and the Houston & Shreveport Railroad, are not unreasonable *per se*; that inasmuch as the intrastate Texas rates between points wholly within the State of Texas intervening between Dallas and Houston and Shreveport are less for substantially similar distances, these intrastate rates are illegally discriminative against Shreveport, and the order of the Commission is that they be equalized. The order was attacked in the bill before the United States Commerce Court upon three grounds:

First, that the order of the Commission seeks to regulate and control purely intrastate rates, and that under the Act to Regulate Commerce, it was without authority or jurisdiction to make such order;

Second, that the intrastate Texas rates complained of were rates installed by the Railroad Commission of Texas, and that the carriers, having no authority under the law to disregard such rates, or to install other or different rates, the same were not voluntary rates, and did not therefore constitute an illegal discrimination;

Third, that the Congress of the United States is with-

out power, under the Constitution of the United States, to regulate or control a purely intrastate rate.

These cases have been heard before the United States Commerce Court, and that court, on April 25th, 1913, sustained the order of the Commission and dismissed the bills. The main opinion was rendered in the case of Texas & Pacific Railway Company v. United States, is reported in 205 Fed. Rep., 380, and is attached hereto, marked Exhibit "A." An appeal having been duly prayed for, was allowed, and the cause is here presented for revision upon the following assignments of error:

FIRST.

The court erred in dismissing the petition of Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company, petitioners herein, and the petitions of Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company and St. Louis & Southwestern Railway Company of Texas, intervening petitioners herein, and rendering final decree herein, sustaining and holding valid the order of the Interstate Commerce Commission in Cause No. 3918, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, v. St. Louis Southwestern Railway Company et al., of date March 11, 1912, for that:

Said order of the Interstate Commerce Commission was, and is, wholly invalid and void, in that the Interstate Commerce Commission having therein held that the interstate commodity rates from Shreveport, Louisiana, to the several Texas points in said order mentioned, were in all things reasonable, the said Interstate Commerce Commission is without power, authority or jurisdiction to order petitioners, Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company, to equalize rates imposed by the Railroad Commission of Texas between points wholly within the State of Texas, so as to conform said intrastate rates so made by and

under the authority of the Railroad Commission of Texas to the said interstate rates applicable from Shreveport, Louisiana, to said points in Texas mentioned, and said Interstate Commerce Commission is without power, authority or jurisdiction to compel petitioners to reduce reasonable interstate rates to equalize same with lower intrastate rates installed by petitioners under the compulsion of the orders of the Railroad Commission of Texas.

SECOND.

The court erred in dismissing said petition and sustaining said order of the Interstate Commerce Commission, for that:

The Interstate Commerce Commission is wholly without power or jurisdiction under the Interstate Commerce Act, approved February 4th, 1887, and act amendatory thereof, to make any valid order controlling or seeking to control rates wholly within the State of Texas made by the Railroad Commission of Texas, under and by virtue of valid laws of the State of Texas, duly authorizing it thereto.

THIRD.

The court erred in dismissing said petition and sustaining the said order of the Interstate Commerce Commission, for that:

The Congress of the United States is wholly without power to enact any valid law controlling, or seeking to control, purely intrastate rates applicable to commerce moving wholly between points situated within the limits of the State of Texas, and made by the Railroad Commission of Texas in pursuance of authority duly and legally conferred by the Constitution and laws of that State.

FOURTH.

The court erred in dismissing said petition and entering its final decree herein, sustaining the order of the Interstate Commerce Commission therein complained of, for that:

The uncontradicted evidence herein shows that the commodity rates complained of from Dallas towards Shreveport and from Houston towards Shreveport,

applied wholly to points within the State of Texas; that said rates were duly ordered and installed by the Railroad Commission of Texas, which had full power to make and install the same under the Constitution and laws of the State of Texas; and that petitioners and intervening petitioners, appellants herein, were forced, under the compulsion of severe penalties, to apply the same, and petitioners and intervening petitioners are, and were, wholly without right, power or authority, under said laws of the State of Texas, to apply between said points any other or different rates than the rates so prescribed by the Railroad Commission of Texas, and the Interstate Commerce Commission having held in the order complained of that the commodity rates herein involved from Shreveport, in the State of Louisiana, to said points in the State of Texas, were in and of themselves reasonable, petitioners, and intervening petitioners, appellants herein, were and are wholly without power or authority to make or apply between said points in the State of Texas any other or different rates than those prescribed by the Railroad Commission of Texas, and the Interstate Commerce Commission was and is wholly without power, authority or jurisdiction to compel petitioners and intervening petitioners, appellants herein, to install or apply between said points wholly within the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas.

FIFTH.

The court erred in dismissing the petition of Houston East & West Texas Railway Company and Houston & Shreveport Railroad Company and the petitions of the intervening petitioners herein, and in sustaining the order of the Interstate Commerce Commission herein complained of, for that:

The Interstate Commerce Commission had no power or authority or jurisdiction to make any order on the petitioners or intervening petitioners herein, requiring or compelling them to remove the discrimination (if it be a discrimination,) it not being an undue or illegal discrimination, of which the Interstate Commerce Commission has, under Section 3 of the Act

to Regulate Commerce or any other valid law of the United States, power, authority or jurisdiction to remove.

These assignments present essentially the three propositions above referred to, to wit:

First, the Act to Regulate Commerce does not confer upon the Interstate Commerce Commission jurisdiction or authority to regulate or control purely intrastate rates, and the order complained of is void for lack of jurisdiction.

Second, the Texas intrastate rates complained of are not voluntary rates applied by the carriers, but are rates prescribed by the duly constituted authorities of the State of Texas, obedience to which is compelled by the Texas law, and such obedience cannot constitute an illegal discrimination under the Act to Regulate Commerce.

Third, the Congress of the United States has no power under the Constitution of the United States to regulate or control purely intrastate commerce and rates.

On December 19th, 1890, Section 2 of Article 10 of the Constitution of the State of Texas was amended so as thereafter to read as follows:

“Railroads heretofore constructed, or which may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.”

Pursuant to the constitutional authority here given, the legislature of the State of Texas passed an act creating the Railroad Commission of Texas, approved April 21st, 1891, which act is brought forward in the Revised Statutes of 1911, Articles 6653-6716, inclusive.

The powers and duties of said Railroad Commission are set forth in Articles 6654-6663, inclusive. Said articles being here set forth:

“Art. 6654 *Powers and Duties*.—The power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

“1. *To Classify Freights*.—The said Commission shall have power, and it shall be its duty, to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes and subdivisions as may be found necessary and expedient.

“2. *To Fix Reasonable Rates*.—The Commission shall have power and it shall be its duty to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions.

“3. *Classifications to be Uniform*.—The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter.

“4. *May Fix Different Rates*.—The said Commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express

companies, different from the rates fixed for railroads.

"5. *Rates for Connecting Lines.*—The said Commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

"6. *Commission to Fix When There is Disagreement.*—If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, the Commission shall fix the pro rata part of such charges to be received by each of said connecting lines.

"7. *Old Rates to Exist until Changed by the Commission.*—Until the Commission shall make the classification and schedules of rates as herein provided for, afterwards, if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classification and rates shall be put into effect in the manner provided for general classifications and schedules of rates.

"8. *May Alter, Abolish, etc.*—The Commission shall have power, and it shall be its duty, from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

"9. *May Adopt Rules and Regulations.*—The Commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear, and determine complaints that may be made against the classifications and rates, the rules, regulations and determinations of the Commission.

"10. *Empty Cars.*—The Commission shall make reasonable and just rates or charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for

each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours notice to the consignee, not to include Sundays.

“11. *May Fix Rates for all Services.*—The Commission shall make and establish reasonable rates for transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any other railroad subject hereto.

“12. *Railways to Maintain Depots, etc.*—It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations, for the accommodation of passengers; and said depot buildings shall be kept well lighted and warm for the comfort and accommodation of the traveling public, and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by said roads; provided that this shall not be construed as repealing any existing laws on the subject.

“Art. 6655. *Notice to be Given when Rates Fixed.*—Before any rate shall be established under this chapter, the Commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rate shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done, and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases:

“1. *May Fix Rules for All Investigations*—The Commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person de-

siring to be present at any such investigation by said Commission shall be denied admission.

"2. *May Administer Oaths, Etc.*—The chairman, and each of the Commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel attendance of witnesses, and the production of papers, way-bills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the District or County Court.

"Art. 6656. *Rates to be Held Conclusive until, Etc.*—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action, shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein, until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Arts. 6657-6658 of this chapter.

"Art. 6657. *When Railway Dissatisfied, May File Petition, Etc.*—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms; and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, suit may be filed

during such term, and stand ready for trial after ten days' notice.

“Art. 6658. *Burden of Proof*—In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence, that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable or unjust to it or them.

“Art. 6659. *Railroads to be Furnished with Schedule of Rates Fixed*—Said Commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule, in suitable form, showing the classification of freight made by them, and the rates fixed by said Commission to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this State, if it has such office in this State, and, if not, then to any agent of said company in this State; which said schedule, rules and regulations, shall take effect at the date which may be fixed by said Commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said Commission may at any time abolish, alter, or in any manner amend the said schedule, or abolish or amend any such regulation; and in that event, certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made except after ten days' notice to, and consent of, the Commission.

“Art. 6660. *Emergency Freight Rates*—In addition to the powers conferred on the Railroad Commission of Texas by Arts. 6655 and 6659, said Commission shall have the power, when deemed by it necessary, to prevent interstate rate wars, and injury to the

business and interests of the people or railroads of the State, or in case of any other emergency to be judged of roads of the State, or in case of any other emergency to be judged of by the Commission, it shall be its duty to temporarily alter, amend, or suspend and existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and to fix freight rates where none exist.

“Art. 6661. *To What Roads Apply*—Said emergency rates so made by the Commission shall apply on any one or more of all the railroads in this State, or part of railroads that may be directed by the Commission.

“Art. 6662. *Rates Take Effect, When and How Long Continued*—Said rates so made shall take effect at such time and remain in force for such length of time as may be prescribed by the Commission.

“Art. 6663. *Temporary Freight and Passenger Tariff, Power to Make*—In addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs to take immediate effect at such time as shall be fixed by said Commission whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff, and to establish freight and passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exist.”

Under Art. 6669 of the Revised Statutes of Texas, it is made penal for any carrier to charge a greater rate of transportation than that prescribed by the Railroad Commission. The article is as follows:

“Art. 6669. *Penalty for Extortion*—If any railroad company subject to this chapter, or its agents, or officer, shall hereafter charge, collect, demand, or receive from any persons, company, firm or cor-

poration a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars, nor more than five thousand dollars."

Under Article 6671 of said statutes, a penalty accrues to each individual shipper when the carrier makes a charge in excess of that prescribed by the Railroad Commission. The article is as follows:

"Art. 6671. *Damages; Penalty; Venue in Cases of Discrimination*—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done, any matter, act or thing, in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation, injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm, or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars, nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact, provided that any such recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violation."

Failure to obey the orders of the Railroad Commission is made penal by Article 6672, which is as follows:

"Art. 6672. Penalty not Otherwise Provided—
If any railroad company doing business in this State shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect, or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars."

ARGUMENT.

I.

The act to regulate commerce does not confer upon the Interstate Commerce Commission jurisdiction or authority to regulate or control purely intrastate rates, and the order complained of is void for lack of jurisdiction.

The United States Commerce Court, through Knapp, P. J., thus states the case:

"There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, Louisiana, to Dallas, Texas, and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner from Dallas to the same intermediate points in the state of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distance of 42 miles, is 56 cents per 100 pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges, it is obvious that Shreveport is severely, if not fatally, handicapped in its competition with Dallas, for the trade of the intervening ter-

ritory, most of which is situated in the State of Texas. It appears that operating conditions are substantially the same throughout the entire line, and in both directions between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded that the rate situation here in question would clearly constitute undue prejudice to Shreveport, and undue preference to Dallas, within the meaning of the third section of the act [Act Feb. 4, 1887, c. 104, 24 Stat., 380 (U. S. Comp. St. 1901, p. 3155)], provided that section be applicable if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the contention is made that as a matter of law it is not, and cannot be, undue, or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas, and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section cannot be predicated upon a rate relation, however unjust, which is brought about not by the voluntary action of the carrier, but by the command of the State, which the carrier is constrained to obey.

"In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas Commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas Commission, by imposing upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce,

and thereby obstructed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such a result, whether intended or otherwise, is in derogation of the power and authority of Congress under the Commerce Clause of the Constitution."

This clearly sets forth the attitude of the court and the majority of the Commission.

It is submitted that *Simpson v. Shepherd*, 33 Sup. Ct. Rep., 729, and *Knott v. C. B. & Q.* 33 Sup. Ct. Rep., 975, are decisive of this question, and render unnecessary the further citation of authorities.

In the Minnesota case the facts are directly applicable. There, there were numerous cities situated directly on or adjacent to the State line. Interstate rates had long been established from the points across the State line into Minnesota. The Minnesota rate being lower than this interstate rate, it was claimed by the carrier, and found as a fact by the trial court, that these State rates constituted a direct discrimination against the outside point, and compelled a reduction of the interstate rate, or else excluded the competitive point over the State line from competition.

In the case at bar the Interstate Commission does not find that the commodity rates here involved, from Shreveport to the competitive Texas territory, are unreasonable. To the contrary, it treats them as reasonable rates. The Commerce Court says:

"In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, a rate which con-

forms to the first section of the act, and which, therefore, petitioner may justly and legally charge."

There is no finding that the Texas rates from Dallas and Houston towards Shreveport are *per se* unreasonably low. The order of the Commission, and its finding of an unlawful discrimination is based solely upon the proposition that, being lower than the interstate rates from Shreveport, the Texas jobber in Houston and Galveston, has, by reason of these lower and purely intrastate rates, an advantage in competitive territory. The order is that the rates be equalized, and the Commerce Court holds that the carrier is at liberty to increase the rate prescribed by the Railroad Commission of Texas, notwithstanding the Texas statutes punish such action by the severest penalties, accruing both to the State and to the individual shipper, upon each shipment. The court says:

"The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, thus, in effect sanctioning the continuance of those rates. It is likewise a necessary inference from the report and order that, the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates, which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty, and has the right, to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the only method of compliance which would be just, both to the shipper and the carrier. When this order was made upon the facts so ascertained and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no

longer under compulsion in respect to those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission therefore operated to release petitioner as regards the intrastate rates in question from the restraint imposed by the State of Texas, and thereupon, petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficient to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligation."

While much is said in the majority opinion of the Interstate Commerce Commission as to the "protective policy" of the Railroad Commission of Texas, it sufficiently appears that the Texas rates complained of are the ordinary mileage rates which apply between all points in Texas. These rates are presumably reasonable, and by statute they are made conclusively so in all litigation between private parties until set aside by direct action brought for that purpose.

It is probable that both the Commerce Court and the majority of the Commerce Commission were unduly influenced by the decision of Judge Sanborn in the Minnesota case, 184 Fed. Rep., 765.

Section 1 of the act to regulate commerce limits the jurisdiction of the Interstate Commerce Commission, both affirmatively and negatively. After first stating that the provisions of the act apply to transportation from one State or Territory or the District of Columbia, to another State or Territory of the United States, or the District of Columbia, etc., it would seem to have been sufficiently specific to exclude from the jurisdiction of the Commis-

sion purely intrastate commerce. In order that there could be no possible question as to such jurisdiction, the following proviso was added:

“Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering storage or handling of property wholly within one State, and not shipped to, or from, a foreign country, from or to any State or Territory as aforesaid.”

The limitations of the first section are further made more specific by making the act applicable to transportation of property shipped from *any place in the United States* to a foreign country, and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country. The contention made by the majority of the Commission that section 3 of the act broadened its powers, is also disposed of by the decisions of this court in the cases referred to, and it is clearly made apparent by the dissenting opinions of Commissioners Clements, Harlan and McCord that all of the powers conferred in the act must be exercised under the limitations prescribed by section 1.

In order to reach the results obtained in this finding, the Interstate Commission was under the necessity of overruling its own opinions in the following cases: In the Matter of Freight Rates between Memphis and Points in Arkansas, 11 I. C. C., 180; Saunders v. Southern Express Company, 18 I. C. C., 415; Andy's Ridge Coal Company v. Southern R'y Co., 18 I. C. C., 405; New Jersey Fruit Exchange v. C. R. R. of N. J., 2 I. C. R., 84.

In the first of these cases this exact issue was sharply

raised. Complaint was made that local Arkansas rates to Little Rock and Pine Bluff operated as a discrimination against Memphis, and without dissent, the Commission, speaking through Chairman Knapp, said:

“So far as the discrimination of which Memphis complains was caused by the action of the Arkansas Commission, without the consent and against the protest of defendant, it is certainly doubtful in the present state of law whether the defendant can be held responsible. If its voluntary adjustment of rates between these cities was fair and equitable, and that adjustment has been changed and rendered unfair to one of them by action which the defendant could not prevent or control, it is difficult to see on what theory it can be held at fault for the resulting discrimination, provided its Memphis rates *per se* are just and reasonable. In a word, we are constrained to reject the complainant's contention so far as the charge of discrimination against Memphis rests wholly upon comparison with the lower rates imposed by the Arkansas Commission.”

In the case of *Saunders v. Southern Express Company*, 18 I. C. C., 415, the rates imposed by the Railroad Commission of Alabama severely discriminate against the interstate rates from Pensacola to competitive points. The Commission held, speaking through Commissioner Harlan, that it had no jurisdiction in the premises. It was said:

“Moreover, as the defendant's rates are held down under the compulsion of the order by the State Commission, an order by this Commission requiring it to cease and desist from a resulting discrimination against Pensacola would be equivalent to an order requiring defendant to reduce its Pensacola rate to a level with the State rates out of Mobile. Such an order we are not prepared to enter, at least at this time, and as now advised. This view of the record will leave the Pensacola fish dealers without present redress before this Commission so far as the dis-

crimination complained of is concerned, but the situation is one that we find it difficult to remedy under existing legislation. While we have full authority upon certain principles and within certain limits distinctly fixed in the amended act to deal with interstate rates, it is expressly provided in section 1 that 'the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country, from or to any State or Territory as aforesaid.' This language seems to have but one meaning, and that is that, although the Commission may give, and has in fact given, to the National Commission authority to control and regulate the rates to be demanded and accepted by the interstate carriers on interstate traffic, it has excluded us from the exercise of any such powers as to the purely State traffic of interstate carriers. Whatever authority may be vested in the courts for the redress of such wrongs, it seems reasonably clear that this Commission, under such circumstances as are disclosed on the record, may not lawfully interfere by an order, the purpose of which is to directly or indirectly to affect the rates imposed upon the defendant by the order of the Alabama Commission."

In the case of *Andy's Ridge Coal Company v. Southern Railway Company et al.*, 18 I. C. C., 405, one of the rates complained of was wholly an intrastate rate. This intrastate rate, the Commission, speaking through Commissioner Prouty, was held to be discriminative against the interstate rate, but without dissent it was again held that the Commission had no power to correct the discrimination. It was said:

"While, however, it has seemed proper to note the discrimination which we find to exist, the Commission is of the opinion that it has no jurisdiction to require by its order a discontinuance of that discrimination, inasmuch as the rate used by the complainant is a

State rate, the movement from from Coal Creek to Nashville being entirely within the State of Tennessee."

Mr. Prouty, in the present opinion, states that this case should be overruled, and it is, of course, very effectually overruled by the majority opinion. Nevertheless, Mr. Prouty himself, in the case of Southwestern Shippers Traffic Association v. A. T. & S. F. R'y Co. et al., 24 I. C. C., 570, decided June 6th, 1912, clearly held that the Commission, without further power conferred by Congress, could not remedy a discriminative situation growing out of State rates from Galveston to interior Texas points. Certain Oklahoma shippers complained of these Texas rates as discriminative against Oklahoma points. But it was held that the Commission was powerless to remedy the situation. He said:

"The hardship which the present adjustment of rates imposed upon central Oklahoma points has been strongly urged upon the attention of the Commission in this proceeding. The Texas Commission establishes rates upon a mileage basis up to a certain distance, beyond which the rate applies as a blanket to all Texas common points. Thus, the first class rate from Galveston for a distance of approximately 300 miles is 87 cents, and this same rate applies to the northern border of Texas, a distance of 450 miles. This gives the distributing cities in the north of Texas, which wholesale in competition with Oklahoma points, a distinctly lower rate from the Atlantic seaboard than Oklahoma enjoys, and undoubtedly results in a decided advantage to Texas jobbing centers in case of articles purchased upon the Atlantic seaboard, but this discrimination is one which this Commission is powerless to remedy. The Texas rates are a matter of domestic concern, over which we exercise no control. The so-called discrimination results not from the Texas rates, but from the fact that under the decision of the Supreme Court of the

United States, the jobber, by taking possession of his traffic at Galveston, can obtain the benefit of the water rate to Galveston, and the rail rate from Galveston, although the shipment is in point of fact an interstate movement. If the results which flow from this holding are not satisfactory, Congress may easily provide that a movement which is interstate in fact shall not be converted into two local movements by an intervening possession. In that case this Commission could establish a reasonable rate to Texas points which must be applied to all shipments from the Atlantic seaboard to those points, and a discrimination resulting from arbitrary conditions like that before us would be rendered impossible. Today this Commission, while it recognizes the existence of the discrimination, cannot pronounce it unlawful."

It will be noted that this case is a much stronger one in favor of the jurisdiction of the Interstate Commission than the case at bar. In fact, Mr. Prouty holds that the movement under the Texas rates from Galveston is really interstate commerce, the transit of which is broken at Galveston. Nevertheless, he holds that by taking possession of his goods at Galveston, the transit is broken, and the rate from Galveston to the border line of Texas, while it results in a discrimination against those shippers across the border, is nevertheless wholly beyond the jurisdiction of the Commission until enlarged by congressional action.

A similar question was before the Commission in the case of *P. P. Williams Co. v. Vicksburg, Shreveport & Pacific R'y Co. et al.*, 16 I. C. C., 482.

The Vicksburg, Shreveport & Pacific Railway runs due west from Vicksburg, through Louisiana, to Shreveport, where connection is made on a practically continuous line with the T. & P. Railway and other roads, to northern Texas points. Vicksburg is as near to, and in some cases

much nearer, competitive points in northern Texas than Galveston. Nevertheless, the interstate rates from Vicksburg to these points were largely in excess of the Texas intrastate rates from Galveston to the same points, the articles especially involved being bagging and ties and wire and nails. For instance, from Galveston to Dallas is 321 miles, and from Vicksburg to the same point is 359 miles. Yet the interstate rate on bagging and ties from Vicksburg is 32 cents per hundred pounds, while from Galveston the state rate is 21 cents, and on wire and nails the interstate rate from Vicksburg is 50 cents, where the Galveston intrastate rate is 25 cents. To other points, such as Paris, Clarksville, Sulphur Springs, Longview, Mineola, Big Sandy, and Terrell, the mileage from Galveston is in excess of that from Vicksburg. The disparity in the rates is therefore apparent, and Vicksburg complained of the discrimination, but the Commission said:

“It is not necessary to consider the rates and mileage from Galveston to the points in northeastern Texas named by the complainant. Those rates are intrastate rates and via other lines than those leading from Vicksburg, so that there can be no valid comparison between them.”

Other cases might be quoted, but these are sufficient to show that continuously the Interstate Commerce Commission has disclaimed the jurisdiction here sought to be exercised, and its decision herein marks a radical departure from the views and practices obtaining since its creation. It can confidently be said that prior to the opinion of Judge Sanborn in the Minnesota case, no decision of any court, State or Federal, or of any governmental administrative body had held that a state made rate applicable solely to intrastate commerce was an interference with interstate commerce, or subject to Federal jurisdic-

tion, because it might have an incidental or consequential effect upon interstate movements or traffic.

The facts in the case of *Alabama & Vicksburg R'y Co. v. Mississippi Railroad Commission*, 203 U. S., 496, are much more proximate in their relation to interstate commerce than those in the case at bar. There, grain from the northwest was shipped to and concentrated at Vicksburg, and on such grain a re-billing rate of $3\frac{1}{2}$ cents per hundred pounds was made on this traffic shipped from Vicksburg to Meridian, Miss., applicable, however, only in cases of shipments over the Vicksburg, Shreveport & Pacific. The Mississippi Commission thereupon made an order to the effect that all grain products shipped from Vicksburg to Mississippi should bear the same rate. This order was attacked as a direct interference with interstate commerce, but this court, speaking through Mr. Justice Brewer, held that the Railroad Commission of Mississippi was within its legal rights.

See also:

Ames v. U. P. R. R. Co., 64 Fed. Rep., 177.

S. P. Co. v. R. R. Commission, 193 Fed. Rep., 699.

L. & N. v. Siler et al., 186 Fed. Rep., 176.

Oregon R'y & Nav. Co. v. Campbell, 173 Fed. Rep., 957.

Woodside v. Tonapah & G. R. Co., 184 Fed., 360.

St. L. & S. F. R'y Co. v. Hadley, 168 Fed., 341.

G. C. & S. F. R'y v. State, 204 U. S., 403.

II.

"The Texas intrastate rates complained of are not voluntary rates applied by the carriers, but are rates prescribed by the duly constituted authorities of the State of Texas, obedience to which is compelled by the Texas law, and such obedience cannot constitute an illegal discrimination under the act to regulate commerce."

The Texas intrastate rates which are held to be discriminatory were promulgated by the Railroad Commission of Texas. If the carriers should, under the Texas statutes, undertake to install higher rates, they are subject to a penalty as for extortion of not more than \$5,000 on each shipment, by a suit of the State of Texas, and a penalty of not less than \$125.00 nor more than \$500.00 on each shipment accruing to the individual shipper. A further penalty accrues of not more than \$5,000.00 for failing to observe the orders of the Railroad Commission. These Texas rates are observed under the severe compulsion of these penalties, and are in no sense voluntary rates. Under the decision of this court in the case of *East Tenn., Va. & Ga. R'y Co. v. I. C. C.*, 181, U. S. 1, section 3 of the act to regulate commerce does not apply. This court, speaking through Chief Justice White, there said:

"The prohibition of section 3 when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts, the result of conditions wholly beyond the control of the carriers."

To the same effect is the decision of the Interstate Commerce Commission In the Matter of Freight Rates Between Memphis and Points in Arkansas, 11 I. C. C. 180.

III.

"The Congress of the United States has no power under the Constitution of the United States to regulate or control purely intrastate commerce and rates."

The whole course of decision in all of the great rate

cases where the validity of State legislation and the action of State authority has been questioned, either as in conflict with the due process, or the commerce clause, of the Federal Constitution, presents no suggestion or intimation that Congress possesses the power to regulate purely domestic commerce. This historic fact, of course, weighs heavily as a rule of construction negating the contention that in the act to regulate commerce it was intended to clothe the Interstate Commerce Commission with an authority never asserted or claimed by Congress itself. It is equally potent as an argument against the very existence of the power. Beginning with *Munn v. Illinois*, 94 U. S., 113, and proceeding step by step through *Stone v. Farmers Loan & Trust Company*, 116 U. S., 307; *C. M. & St. P. R'y Co. v. Minnesota*, 134 U. S., 418; *Dow v. Beidelman*, 125 U. S., 680; *Chicago & Grand Trunk R'y v. Wellman*, 143 U. S., 349; *Reagan v. Farmers Loan & Trust Company*, 154 U. S., 362; *St. L. & S. F. R'y v. Gill*, 156 U. S., 649; and *Smythe v. Ames*, 169 U. S., 466, each and every case proceeds upon the theory and assumption that the right to control purely intrastate and domestic commerce is a high sovereign power of the individual State, and that within this domain the jurisdiction of the State is as complete and exclusive as is that of the Federal government in the regulation of commerce among the States. Equally strong is the proposition in all the great tax cases, and in those where the action of the State, attacked as an interference with interstate commerce, finds its basis in the police power of the State, is the assertion of the proposition that in order to constitute an interference with, or burden upon, interstate commerce, the effect of the State's action must be proximate and direct, and that a mere incidental or consequential effect upon inter-

state commerce does not constitute an invasion of the Federal domain. Time and again, this court has stated the principle that railroad building and rate making are, in reality, functions of the State itself, delegated by legislative authority to private carriers, and that the regulation of rates is a high sovereign power of the State, and where the exercise of this high power is confined to commerce wholly within the State it does not fall within the terms of the Commerce clause of the Constitution. This thought is aptly expressed in the dissenting opinion in *Wabash R'y Co. v. Illinois*, 118 U. S., 557:

“It is only for the sake of convenience that the State lets out its railroads to private corporations. It might construct them itself. Suppose it had done so in this case, could not the State have instituted such rate of freight and fare as it pleased? Certainly it could. It might have made them uniform, as the present law requires them to be, but it might have made them discriminative between different places, and no one could have called it to account. Instructions in the form of laws or in the form of orders made by the State body might have been given to the superintendent of the road, acting in behalf of the State, to adopt the one course or the other. Could the agents of the State, acting under such instructions, have been interfered with by the judicial department on the ground of unconstitutionality? Certainly not, unless discriminations were made to the prejudice of citizens of other States or the produce of other States. The State of New York built and owns the Erie Canal. Did any court ever attempt to control that State in its regulation of tolls on the canal, even though made for the purpose of affecting the rail movement of goods on the canal and railroads of the State? We presume that no such attempt was ever made or would ever be successfully made.”

Sands v. Manistee River & Improvement Co. 123 U. S., 288, involved a law of the State of Michigan permitting

improvements of rivers and the charging of tolls for the use thereof upon schedules of charges submitted to or approved by a State board of control. Suit was brought for such tolls, and the statute attacked as a regulation of interstate commerce. This court, by Justice Fields, said (295):

“The Manistee River is wholly within the limits of the State of Michigan. The State can, therefore, authorize any improvement which in its judgment will enhance its value as a means of transportation from one point of the State to another. *The internal commerce of a State, that is, the commerce which is wholly confined within its limits, is as much under its control as foreign or interstate commerce is under the control of the general government.*”

In *Hopkins v. United States*, 177 U. S., 578, the regulations of the Kansas City Livestock Exchange were attacked as in violation of the Sherman Anti-Trust Act. It was held that the effect of these regulations upon interstate commerce was too remote and indirect to come within the Federal jurisdiction. Justice Peckham, delivering the opinion of the court, says (597):

“But in all the cases which have come to this court, there is not one which has denied the distinction between a regulation which directly affects and embraces interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transactions of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of the charge for the use of the facility.”

In *United States v. Knight*, 156 U. S., 1, which was a proceeding under the Federal anti-trust act, this court, in holding that manufacture is not commerce, and speaking through Chief Justice Fuller, page 13, said:

“It is vital that the independence of the commerce

power and of the police power and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the State as required by their dual form of government, and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run in the effort to suppress them of more serious consequences by resort to expedients of even doubtful constitutionality."

In the case of *Austin v. Tennessee*, 179 U. S., 343, this court, in sustaining the cigarette act of the State of Tennessee, said (349):

"We have had repeated occasion to hold, where State legislation has been attacked as violative either of the power of Congress over interstate commerce, or of the Fourteenth Amendment to the Constitution, that if the action of the State legislature were a *bona fide* exercise of its police power, and dictated by a genuine regard for the preservation of the public health or safety, such legislation would be respected though it might interfere indirectly with interstate commerce."

In *Texas & Pacific Railway v. I. C. C.*, 162 U. S., 197, in discussing the first section of the act to regulate commerce, the court, while asserting the full jurisdiction of Congress, was careful to exclude from that jurisdiction commerce wholly within a State. At page 212 it said:

"It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (*excepting commerce wholly within a State*), as well that between the States and Territories as that going to or coming from foreign countries."

As shown in the cases above cited, the Interstate Commerce Commission has, prior to the rendition of the order

herein involved, been forceful in its repudiation of any authority to act upon commerce between points wholly within a given State, whatever might be the indirect effect upon interstate commerce. This is well illustrated in *New Jersey Fruit Exchange v. Central Railroad Company of New Jersey*, 2 I. C. E., 84. Complaint was made by peach shippers of New Jersey of rates on peaches moving from New Jersey points to New York. It appears that the peach shipments formerly moving directly from New Jersey points of origin to the city of New York were at the time of the complaint delivered to consignees at Jersey City, and they were thereafter, by separate shipping arrangements, transported to New York. Here was a great and continuous stream of commerce moving, it is true, wholly between points in the State of New Jersey, but ultimately to an interstate point. Yet the Commission clearly disclaimed jurisdiction. That the rate from the interior point in New Jersey to Jersey City must indirectly affect the rate to New York could not, of course, be questioned. Nevertheless, the Commission held that it had no jurisdiction in the premises. This and subsequent decisions of the Interstate Commerce Commission are in line with that of this court in *Gulf, Colorado & Santa Fe Railway Company v. State of Texas*, 204 U. S., 403.

The Federal or State jurisdiction must, in the last analysis, rest upon a proposition of fact, to wit: Is the commerce regulated interstate commerce, or is it intrastate commerce? In the case at bar there is no contention that the commerce moving from Houston or from Dallas towards the Louisiana line is otherwise than purely State commerce. There is no contention that the rates prescribed by the Railroad Commission of Texas are different from the rates prescribed for all other citizens of the

State for the same distance and upon the same commodity. And, it is submitted that the mere fact that these rates operate incidentally to give the citizen of Texas distributing his goods to Texas points an incidental advantage over the citizen of Louisiana who wishes to compete in the same territory, cannot in any just or constitutional sense be an interference with interstate commerce. There is no discrimination against the citizen of Louisiana as such. There is no interference with interstate commerce as such. A just and general rule is prescribed by the rate-making authority of the State applicable to all of its citizens, and finding its justification in the local and domestic conditions surrounding the traffic. If these rates enable the citizen of Texas to distribute his products to points within the State at a less rate per mile than can the citizen of another State who wishes to ship in the same territory, the disadvantage of the latter does not constitute such an interference with interstate commerce as justifies congressional action under the commerce clause, but is a mere incident to our dual system of government.

The Employers Liability Cases, 207 U. S., 463, clearly define the rule here sought to be invoked. There the lack of Federal jurisdiction was based upon a simple issue of fact. While the right to regulate and control instrumentalities of interstate commerce was clearly sustained, the absence of Federal power to regulate the liability of the carrier to a servant or agent not engaged in interstate commerce was as clearly asserted, and because the act was general in its terms, and applicable to those engaged in both interstate and intrastate commerce, it was held invalid. It is said:

“From this it follows that the statute deals with

all the concerns of the individuals or corporations to which it relates, if they engage as common carriers in trading or commerce between States, and does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form the statute is addressed to individuals or corporations who are engaged in interstate commerce, and is not confined solely to regulating the interstate commerce business which such persons may do. That is, it regulates the persons because they engage in interstate commerce, and does not alone regulate the business of interstate commerce. * * * The act, then, being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employes, without qualification or restriction as to the business in which the carriers or their employes may be engaged at the time of the injury, of necessity includes subjects wholly outside the power of Congress to regulate commerce."

In reaching the conclusion that the act was unconstitutional, the court quotes the following passage from *Gibbon v. Ogden*, 9 Wheat., 196, which is peculiarly applicable here:

"It is not contended that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to, or affect, other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce *which concerns more States than one*. * * * The genius and character of the whole government seems to be that its action is to be applied to all the internal concerns of the nation and to those internal concerns which affect the State generally but not to those which are completely within a particular State, which do not affect other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government."

If the assertion of the Federal power contended for by the majority of the Interstate Commerce Commission, and upheld by the Commerce Court in the decree appealed from, is here sustained, and the principle is established that every State rate which incidentally affects interstate traffic may be withdrawn from the jurisdiction of the State by congressional action, then as a practical matter, the control of the State over its internal commerce has been lost. As illustrated by one of the cases above referred to, every state rate from Galveston to the interior of Texas has an incidental, but nevertheless very appreciable effect upon the interstate rates into Texas from St. Louis and other distributing points. A vast commerce moves from the eastern, middle and Atlantic States through the port of New York, directly to Galveston, and thence is distributed over the vast domain of Texas. Much of this commerce moves on a port to port ship's bill of lading to Galveston. Some of it moves on a through bill of lading by rail to New York, and water to Galveston. From Galveston, under the rates prescribed by the Railroad Commission of Texas, it moves to interior points in that State. In order to compete with these eastern shippers, carriers from St. Louis, Chicago, and other western points of distribution, must, by the through interstate rates from those points to Texas, meet the rates made by the combination of the water rate to Galveston and the local Texas rate to the competitive Texas territory. The local Texas rate prescribed by the Railroad Commission of Texas, therefore, has an appreciable effect on the interstate rate, for example, from St. Louis, Kansas City and Chicago. Again, goods are shipped from eastern territory by water from Atlantic seaports, on through rates, and through bills of lading, to Texas points. By taking

possession of his goods at Galveston, and shipping to the interior Texas points on the local Texas Railroad Commission rate, the Galveston distributor may be able to obtain a less total charge to the final point of destination than the shipper who uses the through rate and the through bill of lading from the initial point. The purely internal or domestic rate, therefore, in any State with ports of importance, must always have an appreciable influence upon the interstate rate. And, if for that reason Congress has power to regulate these purely internal rates, then the State authorities are shorn of those powers which alone can justify their existence. The illustration of movements to and from ports is far more favorable to the existence of the Federal jurisdiction than are the facts of the case at bar. Because in these cases it might be contended with much force that the movement being practically continuous, a mere incidental interruption for the purpose of taking possession of the article moved, does not deprive the commerce of its essential nature. In the case at bar no such facts exist. The commodity moved from Houston and Dallas, in the direction of Shreveport, on the local Texas rates, is not moved in the stream of interstate commerce. It is a part of the general mass of property in the State. At no point in the transit does the character of interstate commerce attach to it, and while conceding to the utmost the plenary jurisdiction of Congress as to all matters of interstate commerce, it is submitted that as to such a movement the facts do not, and cannot, exist to which that jurisdiction can attach. In view of the legislative and judicial history of this subject matter, it is not hazarding too much to say that, had it been conceived that the contention would be advanced that Congress had the power, or that it intended in the act to regulate com-

merce to confer upon an administrative agency of the government the right to nullify the acts of State authorities applicable to movements confessedly purely intrastate because of their incidental effect upon commerce, interstate in its character, that the act would never have become a law, and the Interstate Commerce Commission never created.

It is believed, however, that this last and most serious question need not be reached in the determination of this case, for the reason that the language of the act itself, as construed by this court, does not confer upon the Interstate Commerce Commission the authority here sought to be exercised. And that, even conceding the jurisdiction of the Commission, the involuntary obedience of the carriers to intrastate rates made by the Texas Railroad Commission cannot constitute an undue or illegal discrimination as against an interstate rate found to be reasonable by the Interstate Commerce Commission.

Respectfully submitted with the prayer that the decree of the United States Commerce Court dismissing appellants' bill be reversed, and that that court be directed to enter its decree enjoining the enforcement of the order of the Interstate Commerce Commission in so far as it affects the commodity rates from Shreveport to Texas points and the same rates as apply from Houston and other points on its line towards Shreveport, for equal distances.

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 Attorneys for Appellants.

BAKER, BOTTS, PARKER & GARWOOD,
 Of Counsel.

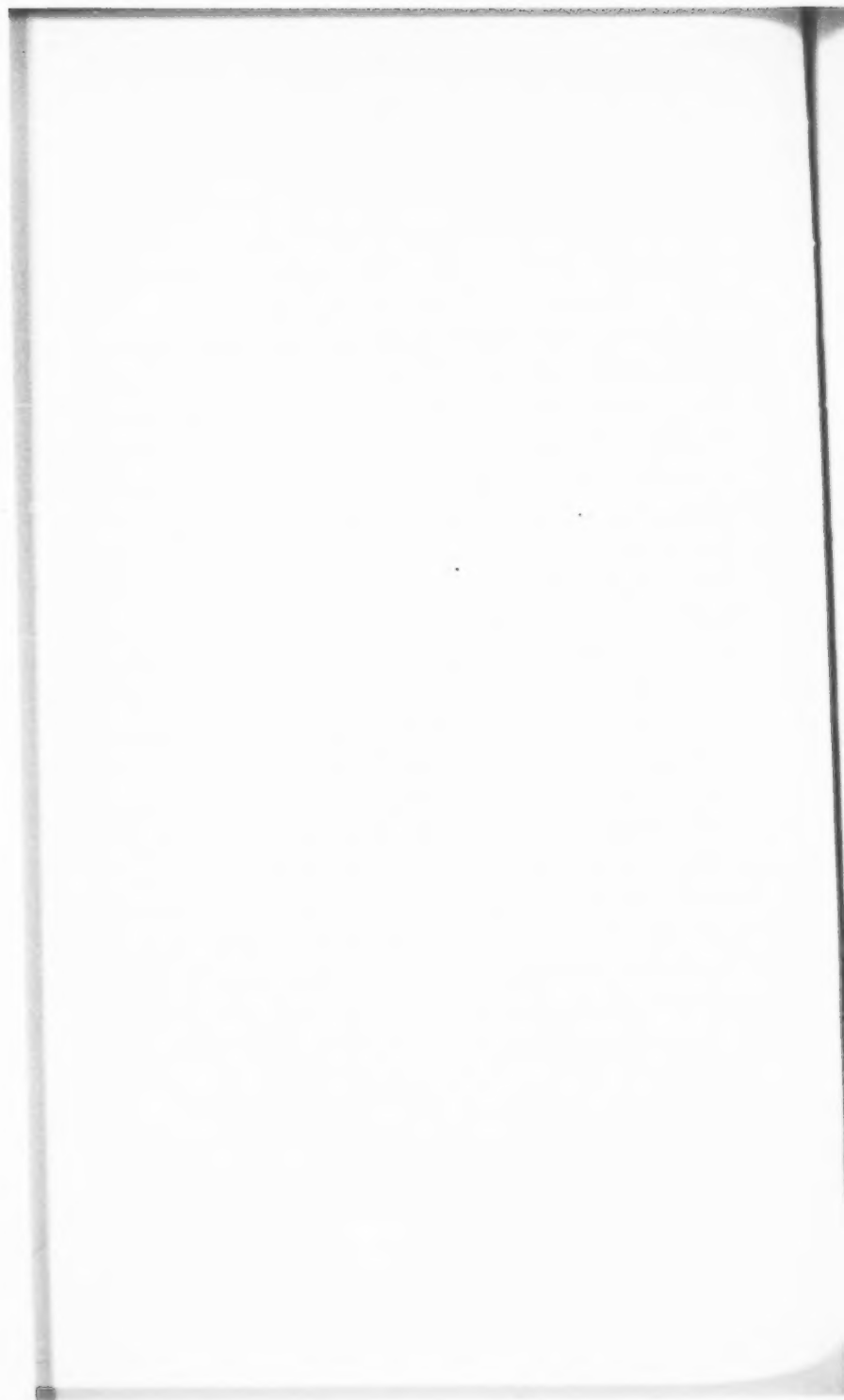


EXHIBIT A.

205 Federal Reporter, 380.

TEXAS & P. R'Y Co. v. UNITED STATES (INTER-
STATE COMMERCE COMMISSION,
et al., Intervenors).

(Commerce Court, April 25, 1913.)

No. 68.

1. COMMERCE (§ 85*)—INTERSTATE COMMERCE COMMISSION—POWERS—DISCRIMINATION BETWEEN LOCALITIES.

The proviso in Interstate Commerce Act Feb. 4, 1887, c. 104, § 1, 24 Stat. 379 (U. S. Comp. St. 1901, p. 3154), that the act shall not apply to transportation wholly within one State, is a mere disclaimer of any intention on the part of Congress to exceed its constitutional power, and was not designed to limit the provisions that are within the power which Congress could exercise, and the proviso does not prevent the application of the third section in prohibiting undue discrimination between localities to cases where such discrimination is brought about by State action, requiring a reduction in intrastate rates.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 138; Dec. Dig. § 85*]

2. COMMERCE (§ 85*)—INTERSTATE COMMERCE COMMISSION—POWERS—DISCRIMINATION BETWEEN LOCALITIES.

Though the preference given to one locality or the disadvantage to which the other is subjected is not due to the voluntary act of the carrier, and although the interstate rates in force may be reasonable in themselves, the Interstate Commerce Commission can correct the discrimination by requiring a just equalization in rates between the two localities.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 138; Dec. Dig. § 85*.]

*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes.

3. COMMERCE (§ 8*)—STATE REGULATION OF RATES—VALIDITY—INTERFERENCE WITH INTERSTATE COMMERCE.

The right of a State to control the movement of its internal commerce, and the instrumentalities employed in such movement, is not unlimited, and the action of a State in reducing railroad rates on intrastate shipments below what is justly compensatory to the carriers, with the purpose and effect of securing unjust and arbitrary advantage to dealers within the State over competitors in other States, directly affects interstate commerce, and encroaches on the field in which Federal authority is supreme and exclusive, and the rates so made cannot be held binding upon the carriers affected.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 5; Dec. Dig. § 8.*]

4. POWER OF INTERSTATE COMMERCE COMMISSION OVER INVOLUNTARY RATES.

While Congress may constitutionally confer upon the Interstate Commerce Commission the power to prevent an undue prejudice between communities, resulting from varying interstate and intrastate rates, even though one or the other be not voluntarily established, such power has not yet been granted. Such an order cannot be based upon a compelled rate, whether interstate or intrastate, and whether compelled by competition, by statute, by court decree, or by order of a Commission. (Per Mack, J.)

5. VOLUNTARY ACQUIESCENCE IN COMPELLED RATES.

The present order can be upheld only upon the theory that the failure of the railroads to attack the Texas Commission rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be decreed to have been voluntarily made by the railroads. (Per Mack, J.)

Petition by the Texas & Pacific Railway Company against the United States of America, in which the Interstate Commerce Commission, the Railroad Commission of Louisiana, the St. Louis Southwestern Railway Company, and others, intervene. On final hearing. Petition dismissed.

For opinion of Interstate Commerce Commission, see *Meredith v. St. Louis Southwestern R'y Co.*, 23 Interst. Com. Comm. R. 31.

Henry G. Herbel, of St. Louis, Mo. (Fred G. Wright, of St. Louis, Mo., on the brief), for petitioner.

Winfred T. Denison, Asst. Atty. Gen (Thurlow M. Gordon, Sp. Asst. Atty. Gen., on the brief), for the United States.

P. J. Farrell, of Washington, D. C., for Interstate Commerce Commission.

Luther M. Walter, of Chicago, Ill. (R. G. Pleasant, Atty. Gen., and W. M. Barrow, Asst. Atty. Gen., on the brief), for Railroad Commission of Louisiana.

Before KNAPP, Presiding Judge, and HUNT, CARLAND and MACK, Judges.

KNAPP, Presiding Judge. The question to be decided in this case has been so thoroughly discussed by the Commission, and kindred questions have been so fully considered in various cases recently decided or now pending in other courts, that little can be profitably said beyond a statement of our conclusions.

There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, La., to Dallas, Tex., and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner from Dallas to the same intermediate points in the State of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distance of 42 miles, is 56 cents per 100 pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges it is obvious that Shreveport is severely, if not fatally, handicapped in its competition with Dallas for the trade of the intervening territory, most of which is situated in the State of Texas. It appears that operating conditions are substantially the same throughout the entire line and in both directions

between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded—and certainly no other inference is permissible—that the rate situation here in question would clearly constitute undue prejudice to Shreveport and undue preference to Dallas, within the meaning of the third section of the act (Act Feb. 4, 1887, c. 104, 24 Stat. 380 [U. S. Comp. St. 1901, p. 3155]), provided that section be applicable, if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the contention is made that as matter of law it is not and cannot be undue, or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas, and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section cannot be predicated upon a rate relation, however unjust, which is brought about, not by the voluntary action of the carrier, but by the command of a State which the carrier is constrained to obey.

In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the services rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas Commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas Commission, by imposing

upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce, and thereby obstructed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such result, whether intended or otherwise, is in derogation of the power and authority of Congress under the commerce clause of the Constitution.

The right of a State to control the movement of its internal commerce and the instrumentalities employed in such movement is not unlimited, as the Supreme Court has repeatedly declared. In the first case which involved the scope and meaning of the commerce clause, *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. Ed. 23, the line of demarkation between State and Federal power was defined by Chief Justice Marshall in the following language:

“It is not intended to say that these words [commerce among the States] comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to *or affect* other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive as the word ‘among’ is, it may very properly be restricted to *that commerce which concerns more States than one*. * * * The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, *and to those internal concerns which affect the States generally*, but not to those which are completely within a particular State, *which do not affect other States*, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government.” (Italics ours.)

This definition has been uniformly accepted and the language itself quoted with approval in a number of cases. *The Daniel Ball*, 10 Wall. 557, 565, 19 L. Ed. 999; *The Lottery Cases*, 188 U. S. 321, 346, 23 Sup. Ct. 321, 47 L. Ed.

492; *The First Employers' Liability Cases*, 207 U. S. 463, 493, 28 Sup. Ct. 141 52 L. Ed., 297. And quite recently, in *The Second Employers' Liability Cases*, 223 U. S. 1, 54, 32 Sup. Ct. 169, 177 (56 L. Ed. 327, 38 L. R. A. [N. S.] 44), Mr. Justice Van Devanter, after quoting to the same effect from *McCulloch v. Maryland*, 4 Wheat. 426, 4 L. Ed. 579, remarks that "particularly apposite is the repetition of that principle in *Smith v. Alabama*," 124 U. S. 465, 473, 8 Sup. Ct. 564, 566 (31 L. Ed. 508), where it is stated as follows:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers, which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."

In the light of these decisions, and many others of similar import, it seems clear to us that Congress is invested with ample power to prevent or remove such a discrimination as is here considered. This is not seriously disputed by petitioner, as we understand the position of counsel; but the contention is pressed that Congress has not exerted its power, even if the power be possessed, to the extent necessary to reach this particular kind of discrimination, and therefore the Commission's order should be set aside because in excess of its authority.

The power which Congress has exercised in this regard finds expression in the third section of the act to regulate commerce, as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in

any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It would be difficult to frame a more comprehensive and unqualified declaration. It applies to all interstate railroads and makes unlawful every act which operates to the undue prejudice of any locality. Taken by itself, and giving to the language used its natural significance, the paragraph quoted brings within its condemnation the rate adjustment here involved, because that adjustment as a matter of fact is obviously prejudicial to the shipping interests of Shreveport. And it would follow from this view of the section that the Commission had authority to correct the ascertained injustice by making the order sought to be enjoined. The opposing view is based upon two general grounds which present the real controversy in this case, and which will now be briefly examined.

[1, 2] In the first place, it is said that the provisions of the third section, above quoted, are to be read in connection with the proviso in the first section, and that this proviso defines and limits the power which Congress intended to exercise by expressly excluding transportation "wholly within one State." In other words, the proviso is claimed to be an exception which exempts from regulation under the act the rates on intrastate traffic, and therefore deprives the Commission of authority to found a violation of the statute upon the relation between State and interstate rates, no matter what may be the effect of that relation upon the movement of interstate traffic. The proviso reads as follows:

"Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

The intent and meaning of this proviso has been quite fully discussed by this court in *Denver & R. G. R. Co. v. Interstate Com. Com'n*, 195 Fed. 968, and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates, not to the carriers, but to the transportation, and is therefore to be read in connection with the second clause of the section, and not with the first. * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a carrier that confined its business to one State, and was not engaged in such interstate business as would bring it within the first clause, the proviso was added. * * *

"The proviso, therefore, must be regarded as a disclaimer, and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain carriers, either by way of disclaimer or by way of exception. * * *

"This construction gives consistent and appropriate meaning to those provisions of the first section which define the scope and application of the entire enactment. It sustains the act as a comprehensive scheme of regulation, designed to include all interstate transportation wholly by railroad, or partly by railroad and partly by water, when both are used under a common arrangement, *and to exempt only that intrastate transportation which is not within the power of Congress to regulate.*"

Adhering to the views then expressed, which are summed up in the last paragraph quoted, we hold that this proviso is a mere disclaimer of any intention on the part of Congress, in enacting the act to regulate commerce, to exceed its constitutional power, and that it was not designed to limit or confine the power which Congress could exercise—and, in our opinion, has exercised—in respect to such matters as are here in dispute. If this construc-

tion be correct, it follows that the proviso in no way prevents the application of the third section to the facts of this case, and therefore it was within the authority of the Commission to make the order in question.

It is argued in the second place, as above stated, that the "undue preference" and "undue prejudice" which are declared unlawful by the third section of the act, as that section has been construed by the Supreme Court, can be predicated only upon the voluntary action of the carrier, and therefore the lower rates from Dallas than from Shreveport are not in violation of the third section, whatever may be the resulting disadvantage to Shreveport shippers, because such lower rates are not voluntarily accorded, but are imposed upon petitioner against its will by the Texas Commission.

This contention is based upon several decisions of the Supreme Court, particularly *East Tenn., etc., R'y Co. v. Interstate Com. Com'n*, 181 U. S. 1, 21 Sup. Ct. 516, 45 L. Ed., 719, and cases there cited, and attention is called to the paragraph in the opinion in that case (181 U. S. 18, 21 Sup. Ct. page 522, 45 L. Ed. 719) in which the following language is used:

"The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers."

It will be observed that this case arose under the long and short haul clause of the original fourth section of the act, and involved the meaning of the phrase "under substantially similar circumstances and conditions," which was eliminated by the amendment of 1910. Act June 18, 1910, c. 309, § 8, 36 Stat. 547 (U. S. Comp. St. Supp. 1911, p. 1288). The real question at issue was whether competition at the longer distance point constituted, or could constitute, a dissimilarity or circumstances and condi-

The intent and meaning of this proviso has been quite fully discussed by this court in *Denver & R. G. R. Co. v. Interstate Com. Com'n*, 195 Fed. 968, and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates, not to the carriers, but to the transportation, and is therefore to be read in connection with the second clause of the section, and not with the first. * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a carrier that confined its business to one State, and was not engaged in such interstate business as would bring it within the first clause, the proviso was added. * * *

"The proviso, therefore, must be regarded as a disclaimer, and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain carriers, either by way of disclaimer or by way of exception. * * *

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tions which relieved the road serving the shorter distance point from the obligation imposed by the fourth section, and the Supreme Court answered that question in the affirmative. Examination of the opinion discloses clearly, as we think, that the convincing reason for this conclusion was the fact that the carrier complained of had not caused and was in no way responsible for the discrimination against the shorter distance locality. That discrimination as was shown, resulted wholly from the lower rates accorded by independent carriers reaching the farther point by other and different routes; and accordingly it was held that the carrier in question, if its rates to the nearer point were reasonable, was not violating the act by meeting at a more remote point conditions there existing which it did not create and could not control. Manifestly the factor deemed decisive in that case is wholly absent from the case at bar, and therefore the ruling then made, notwithstanding the statement above quoted from the opinion, cannot be accepted as sustaining petitioner's contention. Moreover, the administrative authority of the Commission has been materially increased by the amendments of 1906 and 1910, as the Supreme Court observed in the recent Procter & Gamble Case, 225 U. S., 282, 297, 32 Sup. Ct. 761, 56 L. Ed., 1091, and it may be open to doubt whether decisions under the former fourth section would be followed in cases arising under the amended statute.

[3] This, of course does not meet the argument, based upon the different state of facts here presented, that petitioner is under compulsion as respects the State rates in question, and therefore not chargeable with any violation of law because those rates are relatively much lower than its interstate rates from Shreveport. In the last analysis this claim of coercion would seem to beg the question to be decided, since it assumes that petitioner is bound at all events to observe the rates fixed by the Texas Commission although the order sought to be enjoined

justifies the application of higher charges. But if the action of the Texas Commission regarding these intrastate rates is in derogation of the regulating power of Congress, the petitioner is not bound by that action, but has the right to readjust its schedules in conformity with the order of the Interstate Commerce Commission.

In the report upon which that order is based the Commission has found, upon convincing proofs therein recited, that the local rates here involved were imposed by the Texas Commission for the purpose of favoring the industries and communities of that State. Indeed, the evidence is said "to demonstrate that Texas has a policy of her own with respect to the protection of home industry, which has been made effective by consistent and vigorous action on the part of her Commission." And in this policy, as is further found, the petitioner and other carriers in like situation have apparently acquiesced. This plainly means, nor is it seriously disputed, that these Texas rates were prescribed, not with reference to their intrinsic reasonableness, or on the basis of just compensation for the service rendered, but with the undisguised intention of giving preference and advantage to the dealers of that State as against their competitors in Louisiana and other States. As Commissioner Lane puts it:

"The Texas Commission is acting in loco parentis to the jobbing interests of Texas."

It also means, as the record indicates, that the rates so established have been accepted by petitioner without more, at most, than a perfunctory protest. In view of these uncontradicted facts, we are constrained to reject the plea of compulsion, not merely or mainly because petitioner has assented to the protective policy of the Texas Commission, but because that policy directly affects other States, and the flow of commerce from those States, and thereby encroaches upon the field in which Federal authority is exclusive and supreme. To hold otherwise in this case is virtually to admit that the purpose of the Federal act

may be thwarted and its operation made ineffective by the laws and administrative effort of the State of Texas. It is evident, as already stated, that these Texas rates were designed and have the necessary result of securing unjust and arbitrary advantage to the shippers for whom they were provided, by restricting the movement of commodities from other States and measurably excluding outside dealers from competing for trade in Texas territory. The effect of this action by the Texas Commission is not merely incidental and unimportant, but direct, substantial, and to an extent prohibitive. In our judgment it is a positive interference with interstate commerce, which Congress alone has power to regulate, and constitutes a violation of the law which Congress, in the exercise of its power, has duly enacted. The pervading purpose of that law was to prevent carriers subject to its provisions from indulging in unfair and burdensome discriminations against persons and localities engaged in interstate commerce.

But if such a patent discrimination as this case discloses cannot be reached, because it is brought about by a State Commission, the law fails in a most important respect to accomplish its wholesome purpose. Moreover, if one State Commission may create and perpetuate such a discrimination, other State Commissions may take similar action for similar reasons, with results which would greatly impair, and indeed largely defeat, the effectiveness of Federal regulation. To say that conditions thus arising do not offend the Federal law, and cannot be corrected by the Commission appointed to administer that law, is to say in effect that State authority is superior to Federal authority when they come in conflict, whereas the reverse proposition has been repeatedly and invariably affirmed by the Supreme Court of the United States.

It is not claimed that the precise question here presented has been passed upon by the Supreme Court, but in various decisions of that court, principles have been laid down which seem to us clearly applicable if not control-

ling. For example, in the Eubank Case, 184 U. S. 36, 22 Sup. Ct. 280, 46 L. Ed. 416, Mr. Justice Peckham uses the following language:

"We fully recognize the rule that the effect of a State constitutional provision or of any State legislation upon interstate commerce must be direct, and not merely incidental and unimportant; but it seems to us that where the necessary result of enforcing the provision may be to limit or prohibit the transportation of articles from without the State to a point within it, or from a point within to a point without the State, interstate commerce is thereby affected, and may be thereby to a certain extent directly regulated, and in that event the effect of the provision is direct and important, and not a mere incident."

Later, in the Pullman Company Case, 216 U. S. 65, 30 Sup. Ct. 235, 54 L. Ed., 378, Mr. Justice (now Chief Justice) White states certain propositions which are said to be "so conclusively established by the previous decisions of this court as to be now beyond dispute." Among them are these:

"A State may not exert its concededly lawful powers in such a manner as to impose a direct burden on interstate commerce. * * * Even though a power exerted by a State, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce, if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And more recently, in *Southern R'y Co. v. United States*, 222 U. S., 23, 32 Sup. Ct., 4, 56 L. Ed., 72, affirming the validity of the Safety Appliance Acts, Mr. Justice Van Devanter states the principle governing the question there considered, as follows:

"And this is so, not because Congress possesses any power to regulate intrastate commerce as such,

but because its power to regulate interstate commerce is plenary, and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it; that is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

This court, also, in *Penn. R. Co. v. Interstate Com. Commission*, 193 Fed., 81, following the *Illinois Central Case*, 215 U. S., 452, 30 Sup. Ct., 155, 54 L. Ed., 280, upheld orders of the Commission relating to the distribution of coal cars in times of shortage. And in reply to the argument that the carrier could not comply with the orders in question without violating a statute of the State we said:

"It may also be true that the enforcement of regulations in conformity with these orders, if applied to cars for intrastate as well as interstate shipments, would result in some conflict with the duties of petitioner under the laws of Pennsylvania; * * * but, if this is or proves to be the case, it furnishes no ground for our interference, since Federal authority to the full extent that it may be exerted supersedes and limits State authority."

It is true that the laws and orders involved in these decisions pertain to the physical operation of interstate railroads, and not to the relations between State and interstate rates; but in our opinion the underlying question is essentially the same in both classes of cases, and the doctrine of the supremacy of Federal authority should have the same controlling application in the latter as in the former. If State regulation under State laws, respecting such matters as safety appliances, car distribution, and the like, must be subordinated to and may be virtually annulled by national regulation under the national laws now in force, there is even greater reason for asserting the

sufficiency of the existing acts of Congress, and the authority of the tribunal by which they are administered, to remove such a palpably unjust and injurious discrimination in freight charges as is here presented, although that discrimination is caused by the action of the State Commission. This is not to interfere with any power of regulation which a State may rightfully exercise, which does not "affect other States," or materially impede the flow of commerce from one to another, but to give complete and adequate potency to the law which Congress has enacted in pursuance of its plenary and exclusive power to regulate commerce "among the several States." As is said by Sanborn, Judge, in *Shepard v. Northern Pac. Ry. Co.* (C. C.) 184 Fed. 795, after referring to the *Eubank Case*, *supra*:

"By the same mark, because it is a direct regulation of interstate commerce, the nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the nation by the Congress and its courts may affect and regulate intrastate commerce."

It is the duty of an interstate railroad so to adjust its schedules that all dependent shippers and communities, regardless of imaginary State lines which may divide them, shall be able to use its facilities on relatively equal terms; and the Interstate Commerce Commission, in our judgment, is empowered by the present law to enforce the performance of that duty as occasion may require. The necessity for uniform, comprehensive, and adequate regulation, especially urgent in the vital matter of rate relations, compels assertion of the paramount authority of Congress and the appropriate exercise of that authority in those provisions of the act which are leveled against unjust discriminations, wherever existing or however

caused. Indeed, we see no escape from multiplied difficulties arising under our dual form of government, except by broadly defining the constitutional power of Congress, and its exertion as manifested in the enactment of the present law, and by upholding the full application of that law to such controversies as the one here considered. We are therefore in accord with the views of Commissioner Lane, speaking for the majority of the Commission, as expressed in the following extracts from his report:

“An interstate carrier must respect the Federal law, and if it is also subjected to State law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a State Commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission. When the State of Louisiana, after years of endurance, makes complaint to this body, these carriers make no showing of the reasonableness of their rates, other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers did not join. * * * While the Texas Commission has evidenced a policy of home protection for its own State cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the State authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under State direction, that makes against the interstate movement of commerce, must do so with its eyes open and fully conscious of its responsibilities to the Federal law, which guards commerce ‘among the States’ against discrimination.”

The Interstate Commerce Commission investigated the complaint filed with that body on behalf of the shippers and dealers of Shreveport. In its report of that investiga-

tion, and upon proofs that seem to permit no other conclusion, the Commission found the fact of unjust discrimination as alleged, and duly made an order requiring its removal. The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, and this in effect sanctioned the continuance of those rates. It is likewise a necessary inference from the report and order that the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty and has the right to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the only method of compliance which would be just to both shipper and carrier.

When this order was made, upon the facts so ascertained and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no longer under compulsion in respect of those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission therefore operated to release petitioner, as regards the intrastate rates in question, from the restraint imposed by the State of Texas; and thereupon petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficiently to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligations. Whether petitioner should have applied to the courts for relief in the premises, basing its application upon the Commis-

sion's order and the rights of petitioner thereunder, or could advance its Texas rates in the first instance, relying upon the order as a defense against and prosecution under Texas laws, is not for us to determine. It is sufficient to hold, as we do, that petitioner cannot resist the order on the ground of involuntary action, because the effect of that order was an exemption of these intrastate rates from Texas authority.

As was suggested at the outset, the general question here involved has been presented in numerous cases, more or less closely allied, and is perhaps the most conspicuous and important subject of current litigation. In the course of that litigation every decision of possible bearing has been repeatedly cited and every opinion critically examined, whilst the ablest lawyers in briefs and at the bar have exhausted the resources of argument. We can add nothing to what has been so often said, and deem it unnecessary to extend the discussion. In our judgment, the order in question was within the authority of the Commission, and ought not to be set aside.

The petition will therefore be dismissed.

MACK, Judge (concurring). I agree that an intrastate rate voluntarily established by the railroads may be the basis for an order of the Interstate Commerce Commission declaring such a rate to involve an undue prejudice as against an interstate rate, and requiring that the two rates be equalized. I fully agree, also, that Congress has the constitutional power and may by proper legislation grant to the Interstate Commerce Commission authority to prevent undue prejudice in interstate commerce resulting from a rate not in the true sense voluntary, and irrespective of whether it be interstate or intrastate.

In view, however, of the passage cited from *E. R'y Co. v. Interstate Commerce Commission*, 181 U. S. 1, 21 Sup. Ct., 516, 45 L. Ed., 719, and of the decision of this court in *Atchison, T. & S. F. R'y Co. v. U. S.*, 191 Fed. 856, now pending on appeal in the Supreme Court, I am of the

opinion that the Interstate Commerce Commission under the legislation now in force cannot base such an order upon a compelled rate, whether interstate or intrastate, and whether compelled by competition, by statute, by court decree or by the order of a Commission.

In my judgment, the Texas State rates cannot be treated by the Interstate Commerce Commission as if they were absolutely null and void, even if upon direct attack in the State or Federal courts, they might be nullified and their enforcement permanently enjoined as infringing upon the exclusive power of the Federal government to regulate interstate commerce. In the absence of a judicial decree, temporarily or permanently suspending the force and effect of the Texas rates, the railroads would be compelled to obey them, just as the railroads and the public are required to observe interstate rates duly made and published by the railroads, even though they be such as would be set aside for unreasonableness, unjust discrimination, or undue prejudice on direct attack before the Interstate Commerce Commission.

[4] The order of the Interstate Commerce Commission, therefore, gives only an apparent, but not a real, alternative, either to raise the Texas rates, or to lower the interstate rates; in effect it compels the reduction of the interstate rates to a point far below what the Commission itself considers a reasonable rate, at least until a court of competent jurisdiction shall have enjoined the enforcement of the Texas rates. If the Texas rates here in question must necessarily be held to be involuntary and compelled, I should be of the opinion that the order of the Interstate Commerce Commission must be set aside.

[5] Inasmuch, however, as there seems to be some basis, though slight, for the view that the failure of the railroads to attack the Texas rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be said to have been not compelled, but voluntary, in the sense of having been voluntarily assent-

ed to, instead of having been actively attacked, and inasmuch as the conclusions of my Brethren are based in part at least upon this view, I concur, for this reason only, in upholding the Commission's order.

HOUSTON E. & W. T. R'Y Co. et al., v. UNITED STATES (INTERSTATE COMMERCE COMMISSION et al., Intervenor).

(Commerce Court, April 25, 1913.)

No. 67.

Petition by the Houston East & West Texas Railway Company and others against the United States of America, in which the Interstate Commerce Commission, the Railroad Commission of Louisiana, the St. Louis Southwestern Railway Company, and others intervene. On final hearing. Petition dismissed.

For opinion of Interstate Commerce Commission, see *Meredith v. St. Louis Southwestern R'y Co.* 23 Interst. Com. Comm. R. 31.

H. A. Scandrett, of Chicago, Ill., and H. M. Garwood, of Houston, Tex., for the petitioners.

Winfred T. Denison, Asst. Atty. Gen. (ThurLOW M. Gordon, Sp. Asst. Atty. Gen., on the brief), for United States.

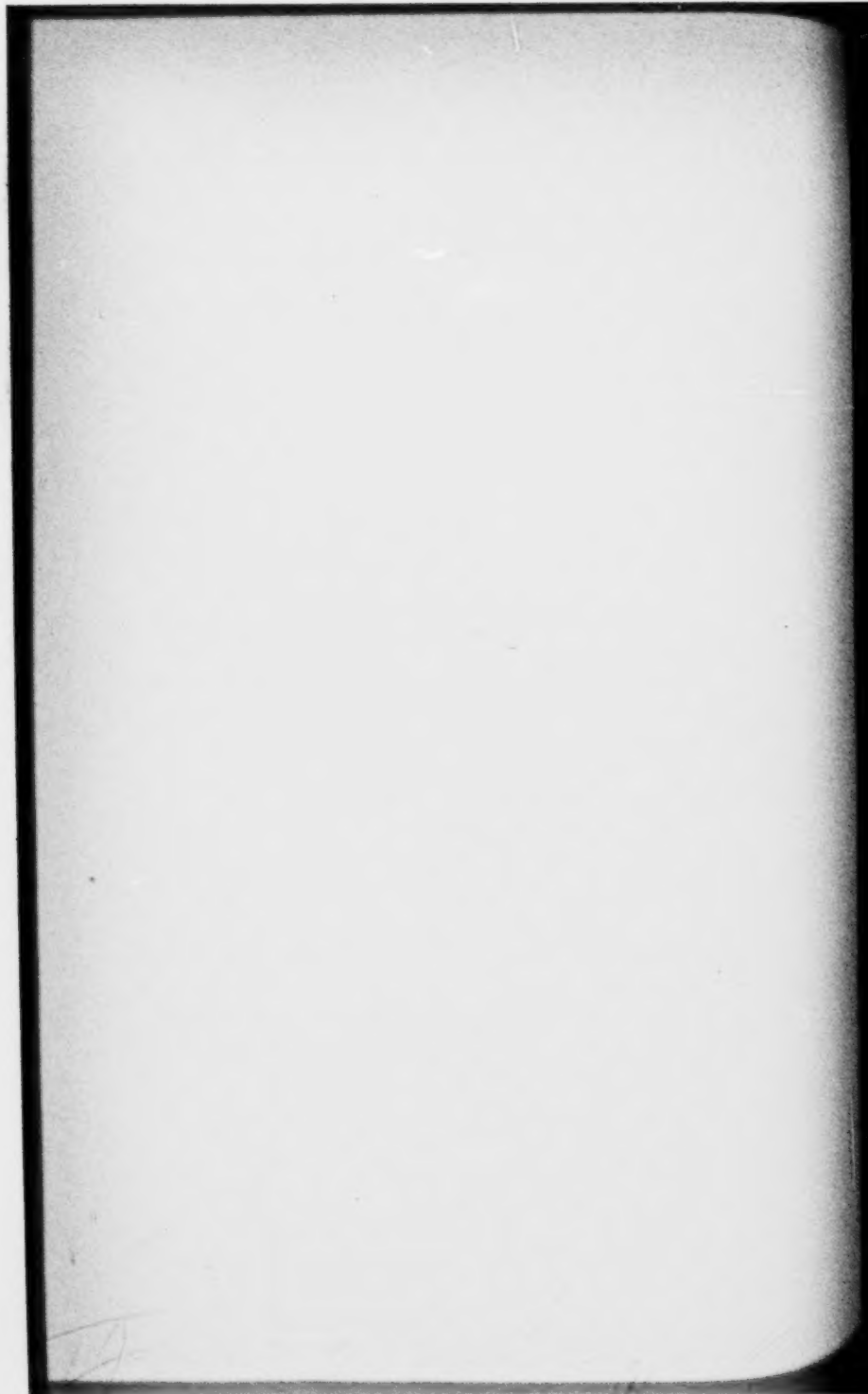
P. J. Farrell, of Washington, D. C., for Interstate Commerce Commission.

Luther M. Walter, of Chicago, Ill. (R. G. Pleasant, Atty. Gen., and W. M. Barrow, Asst. Atty. Gen., on the brief), for Railroad Commission of Louisiana.

E. B. Perkins, of Dallas, Tex., S. H. West and Roy F. Britton, both of St. Louis, Mo., Daniel Upthegrove, of Dallas, Tex., Joseph M. Bryson, of St. Louis, Mo., and Alex. S. Coke and A. H. McKnight, both of Dallas, Tex., for intervening carriers.

Before KNAPP, Presiding Judge, and HUNT, CARLAND, and MACK, Judges.

KNAPP, Presiding Judge. This case involves the same question as *Texas & Pacific R'y Co. v. United States et al.*, 205 Fed., 380, just decided. For the reasons stated in the opinion in that case, the petition will be dismissed.



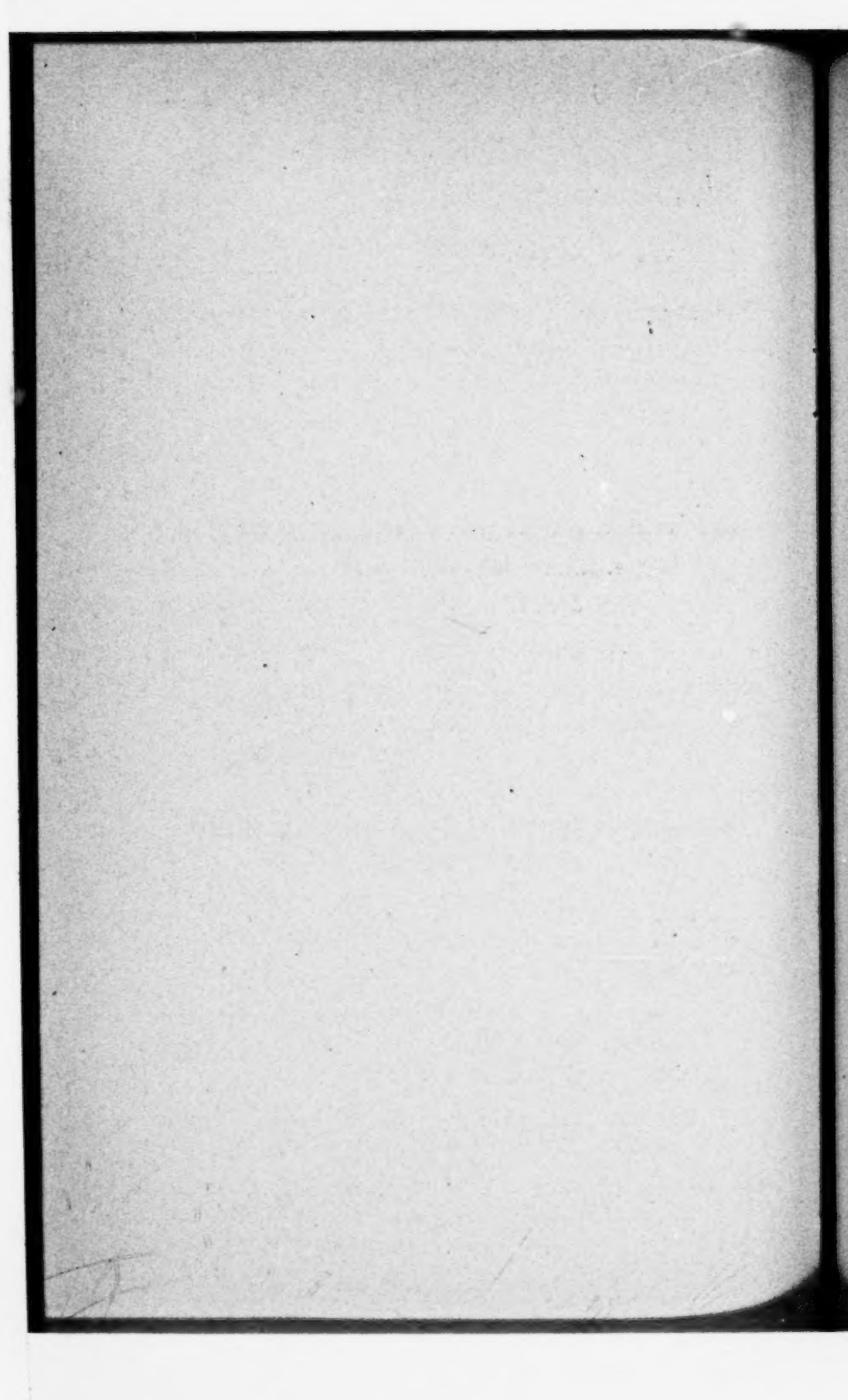
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IN THE
Supreme Court of United States

October Term, 1913.

No. 568.

THE TEXAS & PACIFIC RAILWAY COMPANY
ET AL.,

Appellants,

versus

THE UNITED STATES, THE INTERSTATE COM-
MERCE COMMISSION, ET AL.,

Appellees.

Appeal from the United States Commerce Court.
Brief for Appellants.

This is a companion case to Case No. 567 pending in
this Court styled,

"Houston East & West Texas Railway Company,
and Houston & Shreveport Railroad Company,
Et. Al., Appellants,

vs.

The United States, The Interstate Commerce Com-
mission, Et. Al., Appellees."

and the same questions are involved in both causes.

This cause involves an appeal from a decree of the United States Commerce Court, of date April 25, 1913, dismissing bill for injunction filed by appellants to restrain the enforcement of an order of the Interstate Commerce Commission.

On the 8th day of March, 1911, the Railroad Commission of Louisiana filed a petition with the Interstate Commerce Commission against The Texas & Pacific Railway Company, the Houston East & West Texas Railway Company, the Houston & Shreveport Railroad Company, the St. Louis & Southwestern Railway Company, the St. Louis & Southwestern Railway Company of Texas, the Eastern Texas Railway Company, the Missouri, Kansas & Texas Railway Company of Texas, the Gulf, Colorado & Sante Fe Railway Company, and the International & Great Northern Railway Company, complaining that these carriers discriminated in the rates carried on the various classes and commodities of traffic from Shreveport to Texas, in that the rates charged by the carriers from Texas distributing centers, such as Houston, Dallas and other points in the direction of Shreveport, to points within the State of Texas, the trade of which was in competitive territory between such Texas distributing centers and Shreveport, were less for equal distances than the rates carried by such carriers on the same classes and commodities from Shreveport to such Texas competitive points, and that the Texas intrastate rates applied between such Texas points were less under substantially similar conditions than the interstate rates from the city of Shreveport, in the State of Louisiana, to such competitive points. The prayer of the complainants was that the Interstate Commerce Commission establish

the same basis of rates of transportation between Shreveport and east Texas points as was accorded by the defendants to Texas competitors of Shreveport interests in the same line of business for the same distance. Complaint was also made that the interstate rates from Shreveport to such Texas points were unreasonably high. The Interstate Commerce Commission, after due and regular hearing, made its report and order upon this complaint on March 11th, 1912 (see 23 I. C. C., page 31). (Tr., 19-60). It was found therein that the class rates complained of out of Shreveport to the points on the Texas & Pacific mentioned in the order, and to points on the Houston East & West Texas Railway and the Houston & Shreveport Railroad, were unjust and unreasonable, and an order was made fixing reasonable rates on the several classes for the several stations on the Texas & Pacific Railway from Shreveport to Orphans Home, Texas, and from Shreveport, on the Houston East & West Texas Railway, to Houston, Texas. It was not found that the commodity rates complained of from Shreveport to the several Texas points were unreasonable, and the order of the Interstate Commerce Commission with regard to the commodity rates is based solely upon the proposition that the Texas intrastate rates applied by the carriers to and from Dallas, Houston and other distributing centers, to the points within the State of Texas, are less for substantially similar distances than the interstate rates from Shreveport to said points, and that thereby the intrastate Texas rates applied by the carriers are discriminative as against the interstate rates. The order of the Interstate Commission, which runs only against the Texas & Pacific Railway Company,

the Houston East & West Texas Railway Co., and the Houston & Shreveport Railroad held that the class rates complained of were unreasonably high, and prescribed reasonable rates. As stated, the commodity rates complained of were not found to be unreasonable *per se*, but the Texas & Pacific Railway Company, the Houston East & West Texas Railway Company, and the Houston & Shreveport Railroad Company, were required, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter, to cease and desist from exacting any higher rates for the transportation of any article from Shreveport, Louisiana, to Dallas, Texas, and points on the Texas & Pacific Railway intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Texas, towards Shreveport, for an equal distance. And from exacting any higher rates for the transportation of any article from Shreveport, Louisiana, to Houston, Texas, and points on the line of the Houston East & West Texas Railway and the Houston & Shreveport Railroad intermediate thereto, than are contemporaneously exacted for the transportation of such articles from Houston, Texas, towards Shreveport, for an equal distance. The effective date of this order has been suspended from time to time as to the commodity rates, complained of, and is still under suspension, but the order, in so far as it applied to the class rates, became effective May 1st, 1912, and is not here involved.

Separate suits to enjoin this order were filed by appellants, the Texas & Pacific Railway Company, and Houston East & West Texas Railway Company, Houston & Shreveport Railroad Company in the United States

Commerce Court. The Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company, and St. Louis & Southwestern Railway Company of Texas, intervened and were made parties to the suit filed by appellants Houston East & West Texas Railway and Houston & Shreveport Railroad Company, and are parties to this appeal.

While the bill for injunction against the order of the Interstate Commerce Commission (Tr.,) attacked the entire order of the Commission, both as to the class rates and the commodity rates, the attack upon the class rates was abandoned. The Interstate Commerce Commission having found as a conclusion of fact that these rates were unreasonable, the proceedings before the United States Commerce Court were confined to an attack upon the order of the Interstate Commerce Commission, in so far only as it applied to the commodity rates. The order complained of finds that while the interstate commodity rates from Shreveport to the competitive Texas territory between Shreveport and Dallas on the line of the Texas & Pacific Railway, and between Shreveport and Houston on the line of the Houston East & West Texas Railway and the Houston & Shreveport Railroad, are not unreasonable *per se*; that inasmuch as the intrastate Texas rates between points wholly within the State of Texas intervening between Dallas and Houston and Shreveport are less for substantially similar distances, these intrastate rates are illegally discriminative against Shreveport, and the order of the Commission is that they be equalized. The order was attacked in the bill before the United States Commerce Court upon three grounds:

First, that the order of the Commission seeks to regulate and control purely intrastate rates, and that under the Act to Regulate Commerce, it was without authority or jurisdiction to make such order;

Second, that the intrastate Texas rate complained of were rates installed by the Railroad Commission of Texas, and that the carriers, having no authority under the law to disregard such rates, or to install other or different rates, the same were not voluntary rates, and did not, therefore, constitute an illegal discrimination;

Third, that the Congress of the United States is without power, under the Constitution of the United States, to regulate or control a purely intrastate rate.

These cases have been heard before the United States Commerce Court, and that Court, on April 25th, 1913, sustained the order of the Commission and dismissed the bills. The main opinion was rendered in the case of **Texas & Pacific Railway Company v. United States**, is reported in 205 Fed. Rep., 380, and is attached hereto, marked Exhibit "A." An appeal having been duly prayed for, was allowed, and the cause is here presented for revision upon the following assignments of error:

First.

The Court erred in dismissing the petition of The Texas & Pacific Railway Company, petitioners herein, and the petitions of Missouri, Kansas & Texas Railway Company of Texas, St. Louis & Southwestern Railway Company and St. Louis & Southwestern Railway Company of Texas, intervening petitioners herein, and rendering final decree herein, sustaining and holding valid the order of the Interstate Commerce Commission in

Cause No. 3,918, J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the **Railroad Commission of Louisiana v. St. Louis Southwestern Railway Company, et al.**, of date March 11, 1912, for that:

Said order of the Interstate Commerce Commission was, and is, wholly invalid and void, in that the Interstate Commerce Commission having therein held that the interstate commodity rates from Shreveport, Louisiana, to the several Texas points in said order mentioned, were in all things reasonable, the said Interstate Commerce Commission is without power, authority or jurisdiction to order petitioner, The Texas & Pacific Railway Company to equalize rates imposed by the Railroad Commission of Texas between points wholly within the State of Texas, so as to conform said intrastate rates so made by and under the authority of the Railroad Commission of Texas to the said interstate rates applicable from Shreveport, Louisiana, to said points in Texas mentioned, and said Interstate Commerce Commission is without power, authority or jurisdiction to compel petitioners to reduce reasonable interstate rates to equalize same with lower intrastate rates installed by petitioners under the compulsion of the orders of the Railroad Commission of Texas.

Second.

The Court erred in dismissing said petition and sustaining said order of the Interstate Commerce Commission, for that:

The Interstate Commerce Commission is wholly without power or jurisdiction under the Interstate Commerce Act, approved February 4th, 1887, and acts amendatory thereof, to make any valid order

controlling or seeking to control rates wholly within the State of Texas made by the Railroad Commission of Texas, under and by virtue of valid laws of the State of Texas, duly authorizing it thereto.

Third.

The Court erred in dismissing said petition and sustaining the said order of the Interstate Commerce Commission, for that:

The Congress of the United States is wholly without power to enact any valid law controlling, or seeking to control, purely intrastate rates applicable to commerce moving wholly between points situated within the limits of the State of Texas, and made by the Railroad Commission of Texas in pursuance of authority duly and legally conferred by the Constitution and laws of that State.

Fourth.

The Court erred in dismissing said petition and entering its final decree herein, sustaining the order of the Interstate Commerce Commission therein complained of, for that:

The uncontradicted evidence herein shows that the commodity rates complained of from Dallas towards Shreveport and from Houston towards Shreveport, applied wholly to points within the State of Texas; that said rates were duly ordered and installed by the Railroad Commission of Texas, which had full power to make and install the same under the Constitution and laws of the State of Texas; and that petitioners and intervening petitioners, appellants herein, were forced, under

the compulsion of severe penalties, to apply the same, and petitioners and intervening petitioners are, and were, wholly without right, power or authority, under said laws of the State of Texas, to apply between said points any other or different rates than the rates so prescribed by the Railroad Commission of Texas, and the Interstate Commerce Commission having held in the order complained of that the commodity rates herein involved from Shreveport, in the State of Louisiana, to said points in the State of Texas, were in and of themselves reasonable, petitioners, and intervening petitioners, appellants herein, were and are wholly without power or authority to make or apply between said points in the State of Texas any other or different rates than those prescribed by the Railroad Commission of Texas, and the Interstate Commerce Commission was and is wholly without power, authority or jurisdiction to compel petitioners and intervening petitioners, appellants herein, to install or apply between said points wholly within the State of Texas, any other or different rates than those prescribed by the Railroad Commission of Texas.

Fifth.

The Court erred in dismissing the petition of The Texas & Pacific Railway Company and the petitions of the intervening petitioners herein, and in sustaining the order of the Interstate Commerce Commission herein complained of for that:

The Interstate Commerce Commission had no power or authority or jurisdiction to make any order on the petitioners or intervening petitioners herein, requiring or compelling them to remove the discrimination (if it be a discrimination), it not being an undue or illegal discrimination, of

which the Interstate Commerce Commission has, under Section 3 of the Act to regulate Commerce or any other valid law of the United States, power, authority or jurisdiction to remove.

These assignments present essentially the three propositions above referred to, to-wit:

The foregoing assignments of error are propositions of law within themselves, and present for consideration of this Court the following questions:

First, the Act to Regulate Commerce and the Amendments thereto does not confer upon the Interstate Commerce Commission jurisdiction or authority to regulate or control purely intrastate rates; on the contrary, the Interstate Commerce Commission act expressly eliminates intrastate rates from the jurisdiction of the Interstate Commerce Commission, and the order complained of in this cause is void for lack of jurisdiction.

Second, the Texas intrastate rates complained of are not voluntary rates applied by the carriers, but are rates prescribed by the duly constituted authorities of the State of Texas, obedience to which is compelled by the Texas law, and such obedience cannot constitute an illegal discrimination under the Act to Regulate Commerce.

Third, the Congress of the United States has no power under the Constitution of the United States to regulate or control purely intrastate commerce and rates; if Congress does possess such power it has never exercised same and never vested the exercise of such right in the Interstate Commerce Commission; on the contrary, it has expressly declined to invest such authority in the Inter-

state Commerce Commission, and has expressly taken from the Interstate Commerce Commission any right or jurisdiction over purely intrastate rates.

On December 19th, 1890, Section 2 of Article 10 of the Constitution of the State of Texas was amended so as thereafter to read as follows:

“Railroads heretofore constructed, or which may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. The Legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.”

Pursuant to the constitutional authority here given, the Legislature of the State of Texas passed an act creating the Railroad Commission of Texas, approved April 21st, 1891, which act is brought forward in the Revised Statutes of 1911, Articles 6653-6716, inclusive.

The powers and duties of said Railroad Commission are set forth in Articles 6654-6663, inclusive. Said articles being here set forth:

“Art. 6654. **Powers and Duties.**—The power and authority is hereby vested in the Railroad Commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and

regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

"1. To Classify Freights.—The said Commission, shall have power, and it shall be its duty, to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes and subdivisions as may be found necessary and expedient.

"2. To Fix Reasonable Rates.—The Commission shall have power and it shall be its duty to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions.

"3. Classification to be Uniform.—The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter.

"4. May Fix Different Rates.—The said Commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies, different from the rates fixed for railroads.

"5. Rates for Connecting Lines.—The said Commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this State reasonable joint rates of freight charges for the various classes of

freight and cars that may pass over two or more lines of such railroads.

"6. Commission to Fix When There is Disagreement.—If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passenger or cars over their lines, the Commission shall fix the pro rata part of such charges to be received by each of said connecting lines.

"7. Old Rates to Exist Until Changed by the Commission.—Until the Commission shall make the classification and schedules of rates as herein provided for, afterwards, if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classification and rates shall be put into effect in the manner provided for general classification and schedules of rates.

"8. May Alter, Abolish, etc.—The Commission shall have power, and it shall be its duty, from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

"9. May Adopt Rules and Regulations.—The Commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear, and determine complaints that may be made against the classifications and rates, the rules, regulations and determinations of the Commission.

"10. Empty Cars.—The Commission shall make reasonable and just rates or charges for each railroad subject hereto for the use or transporta-

tion of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays.

"11. May Fix Rates for all Services.—The Commission shall make and establish reasonable rates for transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any other railroad subject thereto.

"12. Railways to Maintain Depots, etc.—It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations, for the accommodation of passengers; and said depot buildings shall be kept well lighted and warm for the comfort and accommodation of the traveling public, and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by said roads; provided that this shall not be construed as repealing any existing laws on the subject.

"Art. 6655. Notice to be Given when Rates Fixed.—Before any rate shall be established under this chapter, the Commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rate shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done, and it shall have process to enforce the attendance of its witnesses.

All process herein provided for shall be served as in civil cases:

"1. May Fix Rules for All Investigations.—The Commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person desiring to be present at any such investigation by said Commission shall be denied admission.

"2. May Administer Oaths, Etc.—The chairman, and each of the Commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel attendance of witnesses, and the production of papers, way-bills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the District or County Court.

"Art. 6656. Rates to be Held Conclusive until, Etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action, shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein, until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Arts. 6657-6658 of this chapter.

"Art. 6657. When Railway Dissatisfied, May File Petition, Etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, or

der, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms; and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, suit may be filed during such term, and stand ready for trial after ten days' notice.

"Art. 6658. Burden of Proof.—In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence, that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable or unjust to it or them.

"Art. 6659. Railroads to be Furnished with Schedule of Rates Fixed.—Said Commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule, in suitable form, showing the classification of freight made by them, and the rates fixed by said Commission to be charged by such road for the transportation of

each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this State, if it has such office in this State, and, if not, then to any agent of said company in this State; which said schedule, rules and regulations, shall take effect at the date which may be fixed by said Commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said Commission may at any time abolish, alter or in any manner amend the said schedule or abolish or amend any such regulation; and in that event, certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made except after ten days' notice to, and consent of, the Commission.

“Are. 6660. Emergency Freight Rates.—In addition to the powers conferred on the Railroad Commission of Texas by Arts. 6655 and 6659, said Commission shall have the power, when deemed by it necessary, to prevent interstate rate wars, and injury to the business and interests of the people or railroads of the State, or in case any other emergency to be judged of by roads of the State, or in case of any other emergency to be judged of by the Commission, it shall be its duty to temporarily alter, amend, or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and to fix freight rates where none exist.

“Art. 6661. To What Roads Apply.—Said emergency rates so made by the Commission shall apply on any one or more of all the railroads in this State, or part of railroads that may be directed by the Commission .

“Art. 6662. Rates Take Effect, When and How Long Continued.—Said rates so made shall take effect at such time and remain in force for such length of time as may be prescribed by the Commission.

“Art. 6663. Temporary Freight and Passenger Tariff, Power to Make.—In addition to all other powers conferred by law upon the Railroad Commission of Texas, said Commission shall have the power to make temporary freight and passenger tariffs to take immediate effect at such time as shall be fixed by said Commission whenever an emergency arises, the sufficiency of which shall be judged of by said Commission, in order that justice may be done or injury prevented any person, place or locality; and said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariff, and to establish freight and passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exist.”

Under Art. 6669 of the Revised Statutes of Texas, it is made penal for any carrier to charge a greater rate of transportation than that prescribed by the Railroad Commission. The article is as follows:

“Art. 6669. Penalty for Extortion.—If any railroad company subject to this chapter, or its agents, or officer, shall hereafter charge, collect, demand, or receive from any persons, company, firm or corporation a greater rate, charge or com-

pensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred dollars, nor more than five thousand dollars."

Under Article 6671 of said statutes, a penalty accrues to each individual shipper when the carrier makes a charge in excess of that prescribed by the Railroad Commission. The article is as follows:

Art. 6671. Damages; Penalty; Venue in Cases of Discrimination.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done, any matter, act or thing, in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation, injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars, nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided that such road may plead

and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact, provided that any such recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violation."

Failure to obey the orders of the Railroad Commission is made penal by Article 6672, which is as follows:

"Art. 6672. Penalty not Otherwise Provided.—

If any railroad company doing business in this State shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect, or refuse to obey any lawful requirement, order, judgment or decree made by the Railroad Commission of Texas, for such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars."

ARGUMENT.

I.

The act to regulate commerce and the amendments thereto does not confer upon the Interstate Commerce Commission jurisdiction or authority to regulate or control purely intrastate rates; on the contrary, the Interstate Commerce Commission act expressly eliminates intrastate rates from the jurisdiction of the Interstate

Commerce Commission, and the order complained of in this cause is void for lack of jurisdiction.

The United States Commerce Court, through Knapp, P. J., thus states the case:

“There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, Louisiana, to Dallas, Texas, and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner from Dallas to the same intermediate points in the State of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distance of 42 miles, is 56 cents per 100 pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges, it is obvious that Shreveport is severely, if not fatally, handicapped in its competition with Dallas, for the trade of the intervening territory, most of which is situated in the State of Texas. It appears that operating conditions are substantially the same throughout the entire line, and in both directions between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded that the rate situation here in question would clearly constitute undue prejudice to Shreveport, and undue preference to Dallas, within the meaning of the third section of the act [Act Feb. 4, 1887, c. 104, 24 Stat., 380 (U. S. Comp. St. 1901, p. 3155)], provided that section be applicable if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the conten-

tion is made that as a matter of law it is not, and cannot be, undue, or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas, and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section cannot be predicated upon a rate relation, however unjust, which is brought about not by the voluntary action of the carrier, but by the command of the State, which the carrier is constrained to obey.

"In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas Commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas Commission, by imposing upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce, and thereby obstructed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such a result, whether intended or otherwise, is in derogation of the power and authority of Congress under the Commerce Clause of the Constitution."

This clearly sets forth the attitude of the Court and the majority of the Commission.

Since the appeal in this case was perfected, the case of *Simpson v. Shepherd*, 33 Sup. Ct. Rep., 729, and *Knott v. C. B. & Q.*, 33 Sup. Ct. Rep., 975, known as the "Minnesota Rate Cases," have been submitted and decided by this Court, and we submit that the decision of this Court in these cases is decisive of the questions involved in the case at bar, and render unnecessary the further citation of authorities.

In the Minnesota case the facts are directly applicable. There, there were numerous cities situated directly on or adjacent to the State line. Interstate rates had long been established from the points across the State line into Minnesota. The Minnesota rate being lower than this interstate rate, it was claimed by the carrier, and found as a fact by the trial Court, that these State rates constituted a direct discrimination against the outside point, and compelled a reduction of the interstate rate, or else excluded the competitive point over the State line from competition.

In the case at bar the Interstate Commission does not find that the commodity rates here involved, from Shreveport to the competitive Texas territory, are unreasonable. To the contrary, it treats them as reasonable rates. The Commerce Court says:

"In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that

is, a rate which conforms to the first section of the act, and which, therefore, petitioner may justly and legally charge."

There is no finding that the Texas rates from Dallas and Houston towards Shreveport are *per se* unreasonably low. The order of the Commission, and its finding of an unlawful discrimination is based solely upon the proposition that, being lower than the interstate rates from Shreveport, the Texas jobber in Houston and Galveston, has, by reason of these lower and purely intrastate rates, an advantage in competitive territory. The order is that the rates be equalized, and the Commerce Court holds that the carrier is at liberty to increase the rate prescribed by the Railroad Commission of Texas, notwithstanding the Texas statutes punish such action by the severest penalties, accruing both to the State and to the individual shipper, upon each shipment. The Court says:

"The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, thus, in effect sanctioning the continuance of those rates. It is likewise a necessary inference from the report and order that, the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates, which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty, and has the right, to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the

only method of compliance which would be just, both to the shipper and the carrier. When this order was made upon the facts so ascertained and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no longer under the compulsion in respect to those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission, therefore operated to release petitioner as regards the intrastate rates in question from the restraint imposed by the State of Texas, and thereupon, petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficient to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligation."

While much is said in the majority opinion of the Interstate Commerce Commission as to the "protective policy" of the Railroad Commission of Texas, it sufficiently appears that the Texas rates complained of are the ordinary mileage rates which apply between all points in Texas. These rates are presumably reasonable, and by statute they are made conclusively so in all litigation between private parties until set aside by direct action brought for that purpose.

It is probable that both the Commerce Court and the majority of the Commerce Commission were unduly influenced by the decision of Judge Sanborn in the Minnesota case, 184 Fed. Rep., 765.

Section 1 of the act to regulate commerce limits the jurisdiction of the Interstate Commerce Commission, both affirmatively and negatively. After first stating that the provisions of the act apply to transportation from one State or Territory or the District of Columbia, to another State or Territory of the United States, or the District of Columbia, etc., it would seem to have been sufficiently specific to exclude from the jurisdiction of the Commission purely intrastate commerce. In order that there could be no possible question as to such jurisdiction, the following provision was added:

“Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering storage or handling of property wholly within one State, and not shipped to, or from, a foreign country, from or to any State or Territory as aforesaid.”

The limitations of the first section are further made more specific by making the act applicable to transportation of property shipped from **any place in the United States** to a foreign country, and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country. The contention made by the majority of the Commission that section 3 of the act broadened its powers, is also disposed of by the decisions of this Court in the cases referred to, and it is clearly made apparent by the dissenting opinions of Commissioners Clements, Harlan and McCord that all of

the powers conferred in the act must be exercised under the limitations prescribed by Section 1.

In order to reach the results obtained in this finding, the Interstate Commission was under the necessity of overruling its own opinions in the following cases. In the **Matter of Freight Rates between Memphis and Points in Arkansas**, 11 I. C. C., 180; **Saunders v. Southern Express Company**, 18 I. C. C., 415; **Andy's Ridge Coal Company v. Southern R'y. Co.**, 18 I. C. C., 405; **New Jersey Fruit Exchange v. C. R. R. of N. J.** '21 C. R., 84.

In the first of these cases this exact issue was sharply raised. Complaint was made that local Arkansas rates to Little Rock and Pine Bluff operated as a discrimination against Memphis; and without dissent, the Commission, speaking through Chairman Knapp, said:

"So far as the discrimination of which Memphis complains was caused by the action of the Arkansas Commission, without the consent and against the protest of defendant, it is certainly doubtful in the present state of law whether the defendant can be held responsible. If it is voluntary adjustment of rates between these cities was fair and equitable, and that adjustment has been changed and rendered unfair to one of them by action which the defendant could not prevent or control, it is difficult to see on what theory it can be held at fault for the resulting discrimination, provided its Memphis rates *per se* are just and reasonable. In a word, we are constrained to reject the complainant's contention so far as the charge of discrimination against Memphis rests wholly upon comparison with the lower rates imposed by the Arkansas Commission."

In the case of **Saunders v. Southern Express Company**, 18 I. C. C., 415, the rates imposed by the Railroad Commission of Alabama severely discriminates against the interstate rates from Pensacola to competitive points. The Commission held, speaking through Commissioner Harlan, that it had no jurisdiction in the premises. It was said:

“Moreover, as the defendant’s rates are held down under the compulsion of the order by the State Commission, an order by this Commission requiring it to cease and desist from a resulting discrimination against Pensacola would be equivalent to an order requiring defendant to reduce its Pensacola rate to a level with the State rates out of Mobile. Such an order we are not prepared to enter, at least at this time, and as now advised. This view of the record will leave the Pensacola fish dealers without present redress before this Commission so far as the discrimination complained of is concerned, but the situation is one that we find it difficult to remedy under existing legislation. While we have full authority upon certain principles and within certain limits distinctively fixed in the amended act to deal with interstate rates, it is expressly provided in Section 1 that ‘the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country, from or to any State or Territory as aforesaid.’ This language seems to have but one meaning, and that is that, although the Commission may give, and has in fact given to the National Commission authority to control and regulate the rates to be de-

manded and accepted by the interstate carriers on interstate traffic, it has excluded us from the exercise of any such powers as to the purely State traffic of interstate carriers. Whatever authority may be vested in the courts for the redress of such wrongs, it seems reasonably clear that this Commission, under such circumstances as are disclosed on the record, may not lawfully interfere by an order, the purpose of which is to directly or indirectly to affect the rates imposed upon the defendant by the order of the Alabama Commission."

In the case of **Andy's Ridge Coal Company v. Southern Railway Company et al**, 18 I. C. C., 405, one of the rates complained of was wholly an intrastate rate. This intrastate rate, the Commission, speaking through Commissioner Prouty, was held to be discriminative against the interstate rate, but without dissent it was again held that the Commission had no power to correct the discrimination. It was said:

"While, however, it has seemed proper to note the discrimination which we find to exist, the Commission is of the opinion that it has no jurisdiction to require by its order a discontinuance of that discrimination, inasmuch as the rate used by the complainant is a State rate, the movement from Coal Creek to Nashville being entirely within the State of Tennessee."

Mr. Prouty, in the present opinion, states that this case should be overruled, and it is, of course, very effectually overruled by the majority opinion. Nevertheless, Mr. Prouty himself, in the case of **Southwestern Shippers'**

Traffic Association v. A. T. & S. F. R'y. Co. et al., 24 I. C. C., 570, decided June 6th, 1912, clearly held that the Commission, without further power conferred by Congress, could not remedy a discriminative situation growing out of State rates from Galveston to interior Texas points. Certain Oklahoma shippers complained of these Texas rates as discriminative against Oklahoma points. But it was held that the Commission was powerless to remedy the situation. He said:

“The hardship which the present adjustment of rates imposed upon central Oklahoma points has been strongly urged upon the attention of the Commission in this proceeding. The Texas Commission establishes rates upon a mileage basis up to a certain distance, beyond which the rate applies as a blanket to all Texas common points. Thus, the first class rate from Galveston for a distance of approximately 300 miles is 87 cents, and this same rate applies to the northern border of Texas, a distance of 450 miles. This gives the distributing cities in the north of Texas, which wholesale in competition with Oklahoma points, a distinctly lower rate from the Atlantic seaboard than Oklahoma enjoys, and undoubtedly results in a decided advantage to Texas jobbing centers in case of articles purchased upon the Atlantic seaboard, but this discrimination is one which this Commission is powerless to remedy. The Texas rates are a matter of domestic concern, over which we exercise no control. The so-called discrimination results not from the Texas rates, but from the fact that under the decision of the Supreme Court of the United States, the jobber, by taking possession of his traffic at Galveston, can obtain the

benefit of the water rate to Galveston, and the rail rate from Galveston, although the shipment is in point of fact an interstate movement. If the results which flow from this holding are not satisfactory, Congress may easily provide that a movement which is interstate in fact shall not be converted into two local movements by an intervening possession. In that case this Commission could establish a reasonable rate to Texas points which must be applied to all shipments from the Atlantic seaboard to those points, and a discrimination resulting from arbitrary conditions like that before us would be rendered impossible. To-day this Commission, while it recognizes the existence of the discrimination, cannot pronounce it unlawful."

It will be noted that this case is a much stronger one in favor of the jurisdiction of the Interstate Commission than the case at bar. In fact, Mr. Prouty holds that the movement under the Texas rates from Galveston is really interstate commerce, the transit of which is broken at Galveston. Nevertheless, he holds that by taking possession of his goods at Galveston, the transit is broken, and the rate from Galveston to the border line of Texas, while it results in a discrimination against those shippers across the border, is nevertheless wholly beyond the jurisdiction of the Commission until enlarged by Congressional action.

A similar question was before the Commission in the case of *P. P. Williams Co. v. Vicksburg, Shreveport & Pacific R'y Co. et al.*, 16 I. C. C., 482.

The Vicksburg, Shreveport & Pacific Railway runs due west from Vicksburg, through Louisiana, to Shreveport,

where connection is made on a practically continuous line with the T. & P. Railway and other roads, to northern Texas points. Vicksburg is as near to, and in some cases much nearer, competitive points in northern Texas than Galveston. Nevertheless, the interstate rates from Vicksburg to these points were largely in excess of the Texas intrastate rates from Galveston to the same points, the articles especially involved being bagging and ties and wire and nails. For instance, from Galveston to Dallas is 321 miles, and from Vicksburg to the same point is 359 miles. Yet the interstate rate on bagging and ties from Vicksburg is 32 cents per hundred pounds, while from Galveston the State rate is 21 cents, and on wire and nails the interstate rate from Vicksburg is 50 cents while the Galveston intrastate rate is 25 cents. To other points, such as Paris, Clarksville, Sulphur Springs, Longview, Mineola, Big Sandy, and Terrell, the mileage from Galveston is in excess of that from Vicksburg. The disparity in the rates is, therefore, apparent, and Vicksburg complained of the discrimination, but the Commission said:

“It is not necessary to consider the rates and mileage from Galveston to the points in northeastern Texas named by the complainant. Those rates are intrastate rates and via other lines than those leading from Vicksburg, so that there can be no valid comparison between them.”

Other cases might be quoted, but these are sufficient to show that continuously the Interstate Commerce Commission has disclaimed the jurisdiction here sought to be exercised, and its decision herein marks a radical departure from the views and practices obtaining since its

creation. It can confidently be said that prior to the opinion of Judge Sanborn in the Minnesota case, no decision of any Court, State or Federal, or of any governmental administrative body had held that a State made rate applicable solely to intrastate commerce was an interference with interstate commerce, or subject to Federal jurisdiction, because it might have an incidental or consequential effect upon interstate movements or traffic.

The facts in the case of **Alabama & Vicksburg R'y Co. v. Mississippi Railroad Commission**, 203 U. S., 496, are much more proximate in their relation to interstate commerce than those in the case at bar. There, grain from the northwest was shipped to and concentrated at Vicksburg, and on such grain a re-billing rate of $3\frac{1}{2}$ cents per hundred pounds was made on this traffic shipped from Vicksburg to Meridian, Miss., applicable, however, only in cases of shipments over the Vicksburg, Shreveport & Pacific. The Mississippi Commission thereupon made an order to the effect that all grain products shipped from Vicksburg to Mississippi should bear the same rate. This order was attacked as a direct interference with interstate commerce, but this Court, speaking through Mr. Justice Brewer, held that the Railroad Commission of Mississippi was within its legal rights.

See also:

Ames v. U. P. R. R. Co., 64 Fed. Rep., 177.

S. P. Co. v. R. R. Commission, 193 Fed Rep, 699.

L. & L. v. Siler et al., 186 Fed. Rep., 176.

Oregon R'y & Nav. Co. v. Campbell, 173 Fed. Rep., 957.

Woodside v. Tonapah & G. R. Co., 184 Fed., 360.

St. L. & S. F. R'y Co. v. Hadley, 168 Fed., 341.

G. C. & S. F. R'y v. State, 204 U. S., 403.

II.

"The Texas interstate rates complained of are not voluntary rates applied by the carriers, but are rates prescribed by the duly constituted authorities of the State of Texas, obedience to which is compelled by the Texas law, and such obedience cannot constitute an illegal discrimination under the act to regulate commerce."

The Texas intrastate rates which are held to be discriminatory were promulgated by the Railroad Commission of Texas. If the carriers should, under the Texas statutes, undertake to install higher rates, they are subject to a penalty as for extortion of not more than \$5,000 on each shipment, by a suit of the State of Texas, and a penalty of not less than \$125.00 nor more than \$500.00 on each shipment accruing to the individual shipper. A further penalty accrues of not more than \$5,000.00 for failing to observe the orders of the Railroad Commission. These Texas rates are observed under the severe compulsion of these penalties, and are in no sense voluntary rates. Under the decision of this Court in the case of *East Tenn., Va. & Ga. R'y. Co. v. I. C. C.*, 181 U. S., 1,

section 3 of the act to regulate commerce does not apply. This Court, speaking through Chief Justice White, there said:

"The prohibition of Section 3 when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts, the results of conditions wholly beyond the control of the carriers."

To the same effect is the decision of the Interstate Commerce Commission **In the Matter of Freight Rates Between Memphis and Points in Arkansas**, 11 I. C. C., 180.

III.

"The Congress of the United States has no power under the Constitution of the United States to regulate or control purely intrastate commerce and rates; if Congress does possess such power it has never exercised same and never vested the exercise of such right in the Interstate Commerce Commission; on the contrary, it has expressly declined to invest such authority in the Interstate Commerce Commission, and has expressly taken from the Interstate Commission any right or jurisdiction over purely intrastate rates."

The whole course of decision in all of the great rate cases where the validity of State legislation and the

action of State authority has been questioned, either as in conflict with the due process, or the commerce clause, of the Federal Constitution, presents no suggestion of intimation that Congress possesses the power to regulate purely domestic commerce. This historic fact, of course, weighs heavily as a rule of construction negating the contention that in the act to regulate commerce it was intended to clothe the Interstate Commerce Commission with an authority never asserted or claimed by Congress itself. It is equally potent as an argument against the every existence of the power. Beginning with **Munn v. Illinois**, 94 U. S., 113, and proceeding step by step through **Stone v. Farmers Loan & Trust Company**, 116 U. S., 307; **C. M. & St. P. R'y Co. v. Minnesota**, 134 U. S., 418; **Dow v. Beidelman**, 125 U. S., 680; **Chicago & Grand Trunk R'y. v. Wellman**, 143 U. S., 349; **Reagan v. Farmers Loan & Trust Company**, 154 U. S., 362; **St. L. & S. F. R'y v. Gill**, 156 U. S., 649; and **Smythe v. Ames**, 169 U. S., 466, each and every case proceeds upon the theory and assumption that the right to control purely intrastate and domestic commerce is a high sovereign power of the individual State, and that within this domain the jurisdiction of the State is as complete and exclusive as is that of the Federal government in the regulation of commerce among the States. Equally strong is the proposition in all the great tax cities, and in those where the action of the State, attacked as an interference with interstate commerce, finds its basis in the police power of the State, is the assertion of the proposition that in order to constitute an interference with, or burden upon, interstate commerce, the effect of the State's action must be proximate and direct, and that a mere inci-

dental or consequential effect upon interstate commerce does not constitute an invasion of the Federal domain. Time and again, this Court has stated the principle that railroad building and rate making are, in reality, functions of the State itself, delegated by legislative authority to private carriers, and that the regulation of rates is a high sovereign power of the State, and where the exercise of this high power is confined to commerce wholly within the State it does not fall within the terms of the Commerce clause of the Constitution. This thought is aptly expressed in the dissenting opinion in *Wabash R'y Co. v. Illinois*, 118 U. S., 557:

“It is only for the sake of convenience that the State lets out its railroads to private corporations. It might construct them itself. Suppose it had done so in this case, could not the State have instituted such rate of freight and fare as it pleased? Certainly it could. It might have made them uniform, as the present law requires them to be, but it might have made them discriminate between different places, and no one could have called it to account. Instructions in the form of laws or in the form of orders made by the State body might have been given to the superintendent of the road, acting in behalf of the State, to adopt the one course or the other. Could the agents of the State, acting under such instructions, have been interfered with by the judicial department on the ground of unconstitutionality? Certainly not, unless discriminations were made to the prejudice of citizens of other States or the produce of other States. The State of New York built and owns the Erie Canal. Did any court ever attempt to control that State in its regulation of tolls on the

canal, even though made for the purpose of affecting the rail movement of goods on the canal and railroads of the State? We presume that no such attempt was ever made or would ever be successfully made."

Sands v. Manistee River & Improvement Co., 123 U. S., 288, involved a law of the State of Michigan permitting improvements of rivers and the charging of tolls for the use thereof upon schedules of charges submitted to or approved by a State board of control. Suit was brought for such tolls, and the statute attacked as a regulation of interstate commerce. This Court, by Justice Fields, said (295):

"The Manistee River is wholly within the limits of the State of Michigan. The State can, therefore, authorize any improvement which in its judgment will enhance its value as a means of transportation from one point of the State to another. **The internal commerce of a State, that is, the commerce which is wholly confined within its limits, is as much under its control as foreign or interstate commerce is under the control of the general government.**"

In **Hopkins v. United States, 177 U. S., 578**, the regulations of the Kansas City Livestock Exchange were attacked as in violation of the Sherman Anti-Trust Act. It was held that the effect of these regulations upon interstate commerce was too remote and indirect to come within the Federal jurisdiction. Justice Peckham, delivering the opinion of the Court, says (597):

"But in all the cases which have come to this Court, there is not one which has denied the dis-

inction between a regulation which directly affects and embraces interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transactions of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of the charge for the use of the facility."

In **United States v. Knight**, 156 U. S., 1, which was a proceeding under the Federal anti-trust act, this Court, in holding that manufacture is not commerce, and speaking through Chief Justice Fuller, page 13, said:

"It is vital that the independence of the commerce power and of the police power and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the State as required by their dual form of government, and acknowledged evils, however, grave and urgent they may appear to be, had better be borne than the risk be run in the effort to suppress them of more serious consequences by resort to expedients of even doubtful constitutionality."

In the case of **Austin v. Tennessee**, 179 U. S., 343, this Court, in sustaining the cigarette act of the State of Tennessee, said (349):

"We have had repeated occasion to hold, where State legislation has been attacked as violative either of the power of Congress over interstate commerce, or of the Fourteenth Amendment to the Constitution, that if the action of the State Legislature were a *bona fide* exercise of its police

power, and dictated by a genuine regard for the preservation of the public health or safety, such legislation would be respected though it might interfere indirectly with interstate commerce."

In **Texas & Pacific Railway v. I. C. C.**, 162 U. S., 197, in discussing the first section of the act to regulate commerce, the Court, while asserting the full jurisdiction of Congress, was careful to exclude from that jurisdiction commerce wholly within a State. A page 212 it said:

"It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (**excepting commerce wholly within a State**), as well that between the States and Territories as that going to or coming from foreign countries."

As shown in the cases above cited, the Interstate Commerce Commission has, prior to the rendition of the order herein involved, been forceful in its repudiation of any authority to act upon commerce between points wholly within a given State, whatever might be the indirect effect upon interstate commerce. This is well illustrated in **New Jersey Fruit Exchange v. Central Railroad Company of New Jersey**, 2 I. C. R., 84. Complaint was made by peach shippers of New Jersey of rates on peaches moving from New Jersey points to New York. It appears that the peach shipment formerly moving directly from New Jersey points of origin to the city of New York were at the time of the complaint delivered to consignees at Jersey City, and they were thereafter, by separate shipping arrangements, transported to New York. Here was a great and continuous stream of com-

merce moving, it is true, wholly between points in the State of New Jersey, but ultimately to an interstate point. Yet the Commission clearly disclaimed jurisdiction. That the rate from the interior point in New Jersey to Jersey City must indirectly affect the rate to New York could not, of course, be questioned. Nevertheless, the Commission held that it had no jurisdiction in the premises. This and subsequent decisions of the Interstate Commerce Commission are in line with that of this Court in **Gulf, Colorado & Santa Fe Railway Company v. State of Texas**, 204 U. S., 403.

The Federal or State jurisdiction must, in the last analysis, rest upon a proposition of fact, to-wit: Is the commerce regulated interstate commerce, or is it intrastate commerce? In the case at bar there is no contention that the commerce moving from Houston or from Dallas towards the Louisiana line is otherwise than purely State commerce. There is no contention that the rates prescribed by the Railroad Commission of Texas are different from the rates prescribed for all other citizens of the State for the same distance and upon the same commodity. And, it is submitted that the mere fact that these rates operate incidentally to give the citizen of Texas distributing his goods to Texas points an incidental advantage over the citizen of Louisiana who wishes to compete in the same territory, cannot in any just or constitutional sense be an interference with interstate commerce. There is no discrimination against the citizen of Louisiana as such. There is no interference with interstate commerce as such. A just and general rule is prescribed by the rate-making authority of the State applicable to all its citizens, and finding its justi-

fication in the local and domestic conditions surrounding the traffic. If these rates enable the citizen of Texas to distribute his products to points within the State at a less rate per mile than can the citizen of another State who wishes to ship in the same territory, the disadvantage of the latter does not constitute such an interference with interstate commerce as justifies Congressional action under the commerce clause, but is a mere incident to our dual system of government.

The **Employers' Liability Cases**, 207 U. S., 463, clearly define the rule here sought to be invoked. There the lack of Federal jurisdiction was based upon a simple issue of fact. While the right to regulate and contral instrumentalities of interstate commerce was clearly sustained, the absence of Federal power to regulate the liability of the carrier to a servant or agent not engaged in interstate commerce was as clearly asserted, and because the act was general in its terms, and applicable to those engaged in both interstate and intrastate commerce, it was held invalid. It is said:

“From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates, if they engage as common carriers in trading or commerce between States, and does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form the statute is addressed to individuals or corporations who are engaged in interstate commerce, and is not confined solely to regulating the interstate commerce business which such persons may do. That is, it regulates the persons because they engage in interstate commerce, and does not alone regulate the business of interstate commerce. * * * The act, then, be-

ing addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employes, without qualification or restriction as to the business in which the carriers or their employes may be engaged at the time of the injury, of necessity includes subjects wholly outside the power of Congress to regulate commerce."

In reaching the conclusion that the act was unconstitutional, the Court quotes the following passage from *Gibbon v. Ogden*, 9 Wheat., 196, which is peculiarly applicable here:

"It is not contended that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to, or affect, other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce **which concerns more States than one.** * * * The genius and character of the whole government seems to be that its action is to be applied to all the internal concerns of the nation and to those internal concerns which affect the State generally but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government."

If the assertion of the Federal power contended for by the majority of the Interstate Commerce Commission, and upheld by the Commerce Court in the decree ap-

pealed from, is here sustained, and the principle is established that every State rate which incidentally affects interstate traffic may be withdrawn from the jurisdiction of the State by Congressional action, then as a practical matter, the control of the State over its internal commerce has been lost. As illustrated by one of the cases above referred to, every State rate from Galveston to the interior of Texas has an incidental, but nevertheless very appreciable effect upon the interstate rates into Texas from St. Louis and other distributing points. A vast commerce moves from the eastern, middle and Atlantic States through the port of New York, directly to Galveston, and thence is distributed over the vast domain of Texas. Much of this commerce moves on a port to port ship's bill of lading to Galveston. Some of it moves on a through bill of lading by rail to New York, and water to Galveston. From Galveston, under the rates prescribed by the Railroad Commission of Texas, it moves to interior points in that State. In order to compete with these eastern shippers, carriers from St. Louis, Chicago, and other western points of distribution, must, by the through interstate rates from those points to Texas, meet the rates made by the combination of the water rate to Galveston and the local Texas rate to the competitive Texas territory. The local Texas rate prescribed by the Railroad Commission of Texas, therefore, has an appreciable effect on the interstate rate, for example, from St. Louis, Kansas City and Chicago. Again, goods are shipped from eastern territory by water from Atlantic seaports, on through rates, and through bills of lading, to Texas points. By taking possession of his goods at Galveston, and shipping to the interior Texas

points on the local Texas Railroad Commission rate, the Galveston distributor may be able to obtain a less total charge to the final point of destination than the shipper who uses the through rate and the through bill of lading from the initial point. The purely internal or domestic rate, therefore, in any State with ports of importance, must always have an appreciable influence upon the interstate rate. And, if for that reason Congress has power to regulate these purely internal rates, then the State authorities are shorn of those powers which alone can justify their existence. The illustration of movements to and from ports is far more favorable to the existence of the Federal jurisdiction than are the facts of the case at bar. Because in these cases it might be contended with much force that the movement being practically continuous, a mere incidental interruption for the purpose of taking possession of the article moved, does not deprive the commerce of its essential nature. In the case at bar no such facts exist. The commodity moved from Houston and Dallas, in the direction of Shreveport, on the local Texas rates, is not moved in the stream of interstate commerce. It is a part of the general mass of property in the State. At no point in the transit does the character of interstate commerce attach to it, and while conceding to the utmost the plenary jurisdiction of Congress as to all matters of interstate commerce, it is submitted that as to such a movement the facts do not, and cannot, exist to which that jurisdiction can attach. In view of the legislative and judicial history of this subject matter, it is not hazarding too much to say that, had it been conceived that the contention would be advanced that Congress had the power, or that it intended in the

act to regulate commerce to confer upon an administrative agency of the government the right to nullify the acts of State authorities applicable to movements confessedly purely intrastate because of their incidental effect upon commerce, interstate in its character, that the act would never have become a law, and the Interstate Commerce Commission never created.

It is believed, however, that this last and most serious question need not be reached in the determination of this case, for the reason that the language of the act itself, as construed by this Court, does not confer upon the Interstate Commerce Commission the authority here sought to be exercised. And that, even conceding the jurisdiction of the Commission, the involuntary obedience of the carriers to intrastate rates made by the Texas Railroad Commission cannot constitute an undue or illegal discrimination as against an interstate rate found to be reasonable by the Interstate Commerce Commission.

Respectfully submitted with the prayer that the decree of the United States Commerce Court dismissing appellants' bill be reversed, and that that Court be directed to enter its decree enjoining the enforcement of the order of the Interstate Commerce Commission in so far as it affects the commodity rates from Shreveport to Texas points and the same rates as apply from Dallas and other points on its line towards Shreveport, for equal distances.

GEORGE THOMPSON,
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Attorneys for Appellants.

THOMAS J. FREEMAN,
Of Counsel.

EXHIBIT A.

205 Federal Reporter, 380.

TEXAS AND PACIFIC RAILWAY COMPANY**versus****UNITED STATES (INTERSTATE COMMERCE COMMISSION, ET AL., INTERVENORS).**

(Commerce Court, April 25, 1913.)

No. 68.

1. **Commerce (Sec. 85*)—Interstate Commerce Commission—Powers—Discrimination Between Localities.**

The proviso in Interstate Commerce Act Feb. 4, 1887, c. 104, Sec. 1, 24 Stat. 379 (U S. Comp. St. 1901, p. 3154), that the act shall not apply to transportation wholly within one State, is a mere disclaimer of any intention on the part of Congress to exceed its constitutional power, and was designed to limit the provisions that are within the power which Congress could exercise, and the proviso does not prevent the application of the third section in prohibiting undue discrimination between localities to cases where such discrimination is brought about by State action, requiring a reduction in intrastate rates.

[Ed. Note.—For other cases, see Commerce, Cent. Dig., Sec. 138; Dec. Dig., Sec. 85*]

2. **Commerce (Sec. 85*)—Interstate Commerce Commission—Powers—Discrimination Between Localities.**

Though the preference given to one locality or the disadvantage to which the other is subjected is not due to the voluntary act of the carrier, and although the interstate rates in force may be reasonable in themselves, the Interstate Commerce Commission can correct the discrimination by requiring a just equalization in rates between the two localities.

[Ed. Note.—For other cases, see Commerce, Cent. Dig., Sec. 138; Dec. Dig., Sec. 85.*]

*For other cases see same topic and Sec. Number in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes.

3. **Commerce (Sec. 8*)—State Regulation of Rates—Validity—Interference with Interstate Commerce.**

The right of a State to control the movement of its internal commerce, and the instrumentalities employed in such movement, is not unlimited, and the action of a State in reducing railroad rates on intrastate shipments below what is justly compensatory to the carriers, with the purpose and effect of securing unjust and arbitrary advantage to dealers within the State over competitors in other States, directly affects interstate commerce, and encroaches on the field in which Federal authority is supreme and exclusive, and the rates so made cannot be held binding upon the carriers affected.

[Ed. Note.—For other cases, see Commerce, Cent. Dig., Sec. 5; Dec. Dig., Sec. 8.]

4. **Power of Interstate Commerce Commission over Involuntary Rates.**

While Congress may constitutionally confer upon the Interstate Commerce Commission the power to prevent an undue prejudice between communities, resulting from varying interstate and intrastate rates, even though one or the other be not

voluntarily established, such power has not yet been granted. Such an order cannot be based upon a compelled rate, whether interstate or intrastate, and whether compelled by competition, by statute, by court decree or by order of a Commission. (Per. Mack, J.)

Voluntary Acquiescence in Compelled Rates.

The present order can be upheld only upon the theory that the failure of the railroads to attack the Texas Commission rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be decreed to have been voluntarily made by the railroads. (Per. Mack, J.)

Petition by the Texas & Pacific Railway Company against the United States of America, in which the Interstate Commerce Commission, the Railroad Commission of Louisiana, the St. Louis Southwestern Railway Company and others, intervene. On final hearing. Petition dismissed.

For opinion of Interstate Commerce Commission, see **Meredith v. St. Louis Southwestern R'y Co., 23 Interst. Com. Comm. R. 31.**

Henry G. Herbel of St. Louis, Mo. (Fred G. Wright, of St. Louis, Mo., on the brief) for petitioner.

Winfred T. Denison, Asst. Atty. Gen. (ThurLOW M. Gordon, Sp. Asst. Atty. Gen., on the brief) for the United States.

P. J. Farrell, of Washington, D. C., for Interstate Commerce Commission.

Luther M. Walter, of Chicago, Ill. (R. G. Pleasant, Atty. Gen., and W. M. Barrow, Asst. Atty. Gen., on the brief) for Railroad Commission of Louisiana.

Before **Knapp**, Presiding Judge, and **Hunt, Carland and Mack, Judges.**

Knapp, Presiding Judge. The question to be decided in this case has been so thoroughly discussed by the Commission, and kindred questions have been so fully considered in various cases recently decided or now pending in other Courts, that little can be profitably said beyond a statement of our conclusions.

There is no dispute about the material facts, and they are easily comprehended. The interstate rates of petitioner from Shreveport, La., to Dallas, Tex., and intermediate points on its line, are very much higher in proportion to distance than the State rates of petitioner vening territory, most of which is situated in the State of Texas. For example, the rate on farm wagons from Shreveport to Marshall, a distanct of 42 miles, is 56 cents per 100 pounds, while the rate from Dallas to Marshall, a distance of 147 miles, is only 36.8 cents. Under such an adjustment of freight charges it is obvious that Shreveport is severely, if not fatally, handicapped in its competition with Dallas for the trade of the intervening territory, most of which i ssituated in the State of Texas. It appears that operating conditions are substantially the same throughout the entire line and in both directions between these two cities, and petitioner makes no claim that the disparity in rates can be justified by differences in the cost of transportation. Indeed, it seems to be conceded—and certainly no other inference is permissible—that the rate situation here in question would clearly constitute undue prejudice to Shreveport and undue preference to Dallas, within the meaning of the third section of the act (Act Feb. 4, 1887, c. 104, 24

Stat. 380 [U. S. Comp. St. 1901, p. 3155]) provided that section be applicable, if the intrastate rates from Dallas, like the interstate rates from Shreveport, were voluntarily established by the carrier. But while the discrimination in fact against Shreveport is admitted, the contention is made that as matter of law it is not and cannot be undue or otherwise in violation of the act, because the intrastate rates in question are made by authority of the State of Texas, and the petitioner is under legal compulsion to observe them. In other words, it is insisted that a violation of the third section cannot be predicated upon a rate relation, however unjust, which is brought about, not by the voluntary action of the carrier, but by the command of a State which the carrier is constrained to obey.

In this suit the order of the Commission is sought to be set aside only so far as it affects commodity rates, and the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the services rendered; that is, rates which conform to the requirements of the first section of the act, and which, therefore, petitioner may justly and lawfully charge. From this finding, in connection with other facts stated, it seems necessarily to follow that the intrastate commodity rates of petitioner from Dallas to the same destinations, which the Texas Commission has prescribed, are materially less than petitioner is justly entitled to charge; and this involves the further consequence that the Texas Commission, by imposing upon petitioner lower rates than it should rightfully receive, has, in point of fact, placed an undue burden upon interstate commerce, and thereby ob-

structed the freedom of its movement. If this is a correct analysis of the situation, as is virtually admitted, it can hardly be doubted that the action which produces such result, whether intended or otherwise, is in derogation of the power and authority of Congress under the commerce clause of the Constitution.

The right of a State to control the movement of its internal commerce and the instrumentalities employed in such movement is not unlimited, as the Supreme Court has repeatedly declared. In the first case which involved the scope and meaning of the commerce clause, **Gibbons v. Ogden**, 9 Wheat. 1, 6 L. Ed. 23, the line of demarkation between State and Federal power was defined by Chief Justice Marshall in the following language:

"It is not intended to say that these words [commerce among the States] comprehend that commerce which is completely internal, which is carried on between man and man in a State or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to **that commerce which concerns more States than one.** * * * The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nations, and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, **which do not affect other States**, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. (Black-letters ours.)

This definition has been uniformly accepted and the language, itself, quoted with approval in a number of cases. *The Daniel Ball*, 10 Wall. 557, 565, 19 L. Ed. 999; *The Lottery Cases*, 188 U. S. 321, 346, 23 Sup. Ct. 321, 47 L. Ed. 492; *The First Employers' Liability Cases*, 207 U. S. 463, 493, 28 Sup. Ct. 141 52 L. Ed., 297. And quite recently, in *The Second Employers' Liability Cases*, 223 U. S. 1, 54, 32 Sup. Ct. 169, 177 (56 L. Ed. 327, 38 L. R. A. [N. S.] 44), Mr. Justice Van Devanter, after quoting to the same effect from *McCulloch v. Maryland*, 4 Wheat. 426, 4 L. Ed., 579, remarks that "particularly apposite is the reptition of that principle in *Smith v. Alabama*," 124 U. S. 465, 473, 8 Sup. Ct. 564, 566 (31 L. Ed 508) where it is stated as follows:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers, which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of oCngress over the subject of commerce, must give way before the supremacy of the national authority."

In the light of these decisions, and many others of similar import, it seems clear to us that Congress is invested with ample power to prevent or remove such a discrimination as is here considered. This is not seriously disputed by petitioner, as we understand the position of counsel; but the contention is pressed that Con-

gress has not exerted its power, even if the power be possessed, to the extent necessary to reach this particular kind of discrimination, and therefore the Commission's order should be set aside because in excess of its authority.

The power which Congress has exercised in this regard finds expression in the third section of the act to regulate commerce, as follows:

“That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect, whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect, whatsoever.”

It would be difficult to frame a more comprehensive and unqualified declaration. It applies to all interstate railroads and makes unlawful every act which operates to the undue prejudice of any locality. Taken by itself, and giving to the language used its natural significance, the paragraph quoted brings within its condemnation the rate adjustment here involved, because that adjustment, as a matter of fact, is obviously prejudicial to the shipping interests of Shreveport. And it would follow from this view of the section that the Commission had authority to correct the ascertained injustice by making the order sought to be enjoined. The opposing view is based upon two general grounds which present the real controversy in this case, and which will now be briefly examined.

[1, 2] In the first place, it is said that the provisions of the third section, above quoted, are to be read in connection with the proviso in the first section, and that this proviso defines and limits the power which Congress intended to exercise by expressly excluding transportation "wholly within one State." In other words, the proviso is claimed to be an exception which exempt from regulation under the act the rates on intrastate traffic, and therefore deprives the Commission of authority to found a violation of the statute upon the relation between State and interstate rates, no matter what may be the effect of that relation upon the movement of interstate traffic. The proviso reads as follows:

"Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storing or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

The intent and meaning of this proviso has been quite fully discussed by this Court in **Denver & R. G. R. Co. v. Interstate Com. Com'n**, 195 Fed., 968, and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates, not to the carriers but to the transportation, and is therefore to be read in connection with the second clause of the section, and not with the first. * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a

carrier that confined its business to one State, and was not engaged in such interstate business as would bring it within the first clause, the proviso was added. * * *

"The proviso, therefore, must be regarded as a disclaimer, and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain carriers, either by way of disclaimer or by way of exception. * * *

"This construction gives consistent and appropriate meaning to those provisions of the first section which define the scope and application of the entire enactment. It sustains the act as a comprehensive scheme of regulation, designed to include all interstate transportation wholly by railroad or partly by railroad and partly by water, when both are used under a common arrangement, and to exempt only that intrastate transportation which is not within the power of Congress to regulate."

Adhering to the views then expressed, which are summed up in the last paragraph quoted, we hold that this proviso is a mere disclaimer of any intention on the part of Congress, in enacting the act to regulate commerce, to exceed its constitutional power, and that it was not designed to limit or confine the power which Congress could exercise—and, in our opinion, has exercised—in respect to such matters as are here in dispute. If this construction be correct, it follows that the proviso in no way prevents the application of the third section to the facts of this case, and therefore it was within the authority of the Commission to make the order in question.

It is argued in the second place, as above stated, that the "undue preference" and "undue prejudice" which are declared unlawful by the third section of the act, as that section has been construed by the Supreme Court, can be predicated only upon the voluntary action of the carrier, and therefore the lower rates from Dallas than from Shreveport are not in violation of the third section, whatever may be the resulting disadvantage to Shreveport shippers, because such lower rates are not voluntarily accorded, but are imposed upon petitioner against its will by the Texas Commission.

This contention is based upon several decisions of the Supreme Court, particularly *East Tenn., etc., R'y Co. v. Interstate Com. Com'n*, 181 U. S. 1, 21 Sup. Ct. 516, 45 L. Ed., 719, and cases there cited and attention is called to the paragraph in the opinion in that case (181 U. S. 18, 21 Sup. Ct., page 522, 45 L. Ed., 719) in which the following language is used:

"The prohibition of the third section, when that section is considered in its property relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers."

It will be observed that this case arose under the long and short haul clause of the original fourth section of the act, and involved the meaning of the phrase "under substantially similar circumstances and conditions," which was eliminated by the amendment of 1910. Act June 18, 1910, c. 309, Sec. 8, 36 Stat. 547 (U. S. Comp. St.

Supp. 1911, p. 1288). The real question at issue was whether competition at the longer distance point constituted or could constitute a dissimilarity or circumstances and conditions which relieved the road serving the shorter distance point from the obligation imposed by the fourth section, and the Supreme Court answered that question in the affirmative. Examination of the opinion discloses clearly, as we think, that the convincing reason for this conclusion was the fact that the carrier complained of had not caused and was in no way responsible for the discrimination against the shorter distance locality. That discrimination as was shown, resulted wholly from the lower rates accorded by independent carriers reaching the farther point by other and different routes; and accordingly, it was held that the carrier in question, if its rates to the nearer point were reasonable, was not violating the act by meeting at a more remote point conditions there existing which it did not create and could not control. Manifestly, the factor deemed decisive in that case is wholly absent from the case at bar, and therefore the ruling then made, notwithstanding the statement above quoted from the opinion, cannot be accepted as sustaining petitioner's contention. Moreover, the administrative authority of the Commission has been materially increased by the amendments of 1906 and 1910, as the Supreme Court observed in the recent **Proctor & Gamble Case**, 225 U. S., 282, 297, 32 Sup. Ct. 761, 56 L. Ed., 1091, and it may be open to doubt whether decisions under the former fourth section would be followed in cases arising under the amended statute.

[3] This, of course, does not meet the argument, based upon the different state of facts here presented, that petitioner is under compulsion as respects the State rates in question, and therefore not chargeable with any violation of law because those rates are relatively much lower than its interstate rates from Shreveport. In the last analysis this claim of coercion would seem to beg the question to be decided, since it assumes that petitioner is bound at all events to observe the rates fixed by the Texas Commission although the order sought to be enjoined justifies the application of higher charges. But if the action of the Texas Commission regarding these intrastate rates is in derogation of the regulating power of Congress, the petitioner is not bound by that action, but has the right to readjust its schedules in conformity with the order of the Interstate Commerce Commission.

In the report upon which that order is based the Commission has found, upon convincing proofs therein recited, that the local rates here involved were imposed by the Texas Commission for the purpose of favoring the industries and communities of that State. Indeed, the evidence is said "to demonstrate that Texas has a policy of her own with respect to the protection of home industry, which has been made effective by consistent and vigorous action on the part of her Commission." And in this policy, as is further found, the petitioner and other carriers in like situation have apparently acquiesced. This plainly means, nor is it seriously disputed, that these Texas rates were prescribed, not with reference to their intrinsic reasonableness or on the basis of just compensation for the service rendered, but with the undisguised intention of giving preference and ad-

vantage to the dealers of that State as against their competitors in Louisiana and other States. As Commissioner Lane puts it:

"The Texas Commission is acting in loco parentis to the jobbing interests of Texas."

It also means, as the record indicates, that the rates so established have been accepted by petitioner without more, at most, than a perfunctory protest. In view of these uncontradicted facts, we are constrained to reject the plea of compulsion, not merely or mainly because petitioner has assented to the protective policy of the Texas Commission, but because that policy directly affects other States, and the flow of commerce from those States, and thereby encroaches upon the field in which Federal authority is exclusive and supreme. To hold otherwise in this case is virtually to admit that the purpose of the Federal act may be thwarted and its operation made ineffective by the laws and administrative effort of the State of Texas. It is evident, as already stated, that these Texas rates were designed and have the necessary result of securing unjust and arbitrary advantage to the shippers for whom they were provided, by restricting the movement of commodities from other States and measurably excluding outside dealers from competing for trade in Texas territory. The effect of this action by the Texas Commission is not merely incidental and unimportant, but direct, substantial, and to an extent prohibitive. In our judgment it is a positive interference with interstate commerce, which Congress alone has power to regulate, and constitutes a violation of the law which Congress, in the exercise of its

power, has duly enacted. The pervading purpose of that law was to prevent carriers subject to its provisions from indulging in unfair and burdensome discriminations against persons and localities engaged in interstate commerce.

But if such a patent discrimination as this case discloses cannot be reached, because it is brought about by a State Commission, the law fails in a most important respect to accomplish its wholesome purpose. Moreover, if one State Commission may create and perpetuate such a discrimination, other State Commissions may take similar action for similar reasons, with results which would greatly impair, and indeed largely defeat, the effectiveness of Federal regulation. To say that conditions thus arising do not offend the Federal law, and cannot be corrected by the Commission appointed to administer that law, is to say in effect that State authority is superior to Federal authority when they come in conflict, whereas the reverse proposition has been repeatedly and invariably affirmed by the Supreme Court of the United States.

It is not claimed that the precise question here presented has been passed upon by the Supreme Court, but in various decisions of that Court, principles have been laid down which seem to us clearly applicable if not controlling. For example, in the **Eubank Case**, 184 U. S., 36, 22 Sup. Ct. 280, 46 L. Ed., 416, Mr. Justice Peckham uses the following language:

“We fully recognize the rule that the effect of a State constitutional provision or of any State legislation upon interstate commerce must be direct, and not merely incidental and unimportant; but it seems to us that where the necessary result of

enforcing the provision may be to limit or prohibit the transportation of articles from without the State to a point within it, or from a point without the State, interstate commerce is thereby affected, and may be thereby to a certain extent directly regulated, and in that event the effect of the provision is direct and important, and not a mere incident."

Later, in the **Pullman Company Case**, 216 U. S., 65, 30 Sup. Ct. 235, 54 L. Ed., 378, Mr. Justice (now Chief Justice) White states certain propositions which are said to be "so conclusively established by the previous decisions of this Court as to be now beyond dispute." Among them are these:

"A State may not exert its concededly lawful powers in such a manner as to impose a direct burden on interstate commerce. * * * Even though a power exerted by a State, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce, if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And more recently, in **Southern R'y Co. v. United States**, 222 U. S., 23, 32 Sup. Ct., 4, 56 L. Ed., 72, affirming the validity of the Safety Appliance Acts, Mr. Justice Van Devanter states the principle governing the question there considered, as follows:

"And this is so, not because Congress possesses any power to regulate intrastate commerce as

such, but because its power to regulate interstate commerce is plenary, and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it; that is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

This Court, also, in **Penn. R. Co. v. Interstate Com. Commission**, 193 Fed., 81, following the **Illinois Central Case**, 215 U. S., 452, 30 Sup. Ct., 155, 54 L. Ed., 280, upheld orders of the Commission relating to the distribution of coal cars in times of shortage. And in reply to the argument that the carrier could not comply with the orders in question without violating a statute of the State we said:

"It may also be true that the enforcement of regulations in conformity with these orders, if applied to cars for intrastate as well as interstate shipments, would result in some conflict with the duties of petitioner under the laws of Pennsylvania; * * * but, if this is or proves to be the case, it furnishes no ground for our interference, since Federal authority to the full extent that it may be exerted supersedes and limits State authority."

It is true that the laws and orders involved in these decisions pertain to the physical operation of interstate railroads, and not to the relations between State and interstate rates; but in our opinion, the underlying ques-

tion is essentially the same in both classes of cases, and the doctrine of the supremacy of Federal authority should have the same controlling application in the latter as in the former. If State regulation under State laws, respecting such matters as safety appliances, car distribution, and the like, must be subordinated to and may be virtually annulled by national regulation under the national laws now in force, there is even greater reason for asserting the sufficiency of the existing acts of Congress, and the authority of the tribunal by which they are administered, to remove such a palpably unjust and injurious discrimination in freight charges as is here presented, although that discrimination is caused by the action of the State Commission. This is not to interfere with any power of regulation which a State may rightfully exercise, which does not "affect other States," or materially impede the flow of commerce from one to another, but to give complete and adequate potency to the law which Congress has enacted in pursuance of its plenary and exclusive power to regulate commerce "among the several States." As is said by Sanborn, Judge, in *Shepard v. Northern Pac. Ry. Co. (C. C.)*, 184 Fed., 795, after referring to the *Eubank Case*, *supra*:

"By the same mark, because it is a direct regulation of interstate commerce, the nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the nation by the Congress and its courts may affect and regulate intrastate commerce."

It is the duty of an interstate railroad so to adjust its schedules that all dependent shippers and communities, regardless of imaginary State lines which may divide them, shall be able to use its facilities on relatively equal terms; and the Interstate Commerce Commission, in our judgment, is empowered by the present law to enforce the performance of that duty as occasion may require. The necessity for uniform, comprehensive, and adequate regulation, especially urgent in the vital matter of rate relations, compels assertion of the paramount authority of Congress and the appropriate exercise of that authority in those provisions of the act which are leveled against unjust discriminations, wherever or however caused. Indeed, we see no escape from multiplied difficulties arising under our dual form of government, except by broadly defining the constitutional power of Congress, and its exertion as manifested in the enactment of the present law, and by upholding the full application of that law to such controversies as the one here considered. We are, therefore in accord with the views of Commissioner Lane, speaking for the majority of the Commission, as expressed in the following extracts from his report:

“An interstate carrier must respect the Federal law, and if it is also subjected to State law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a State Commission, as against which they were helpless. They appealed to no court for relief, nor to this Commission.

When the State of Louisiana, after years of endurance, makes complaint to this body, these carriers make no showing of the reasonableness of their rates, other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers did not join.

* * * While the Texas Commission has evidenced a policy of home protection for its own State cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the State authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under State direction, that makes against the interstate movement of commerce, must do so with its eyes open and fully conscious of its responsibilities to the Federal law, which guards commerce 'among the States' against discrimination."

The Interstate Commerce Commission investigated the complaint filed with that body on behalf of the shippers and dealers of Shreveport. In its report of that investigation, and upon proofs that seem to permit no other conclusion, the Commission found the fact of unjust discrimination as alleged, and duly made an order requiring its removal. The Commission also found by necessary inference, as its order clearly indicates, that the interstate commodity rates in question were not unreasonable, and this in effect sanctioned the continuance of those rates. It is likewise a necessary inference from the report and order that the unlawful discrimination against Shreveport, so far as commodity rates are concerned, was caused by the imposition of intrastate rates

which are lower than petitioner is justly entitled to charge. This being so, it follows that petitioner is at liberty and has the right to comply with the Commission's order by making a proper increase of its Texas rates. Indeed, since its interstate rates are not excessive, such an increase appears to be the only method of compliance which would be just to both shipper and carrier.

When this order was made, upon the facts so ascertained and reported, it had the effect, in our judgment, of relieving petitioner from further obligation to observe the intrastate rates which the Texas authorities had prescribed. The petitioner was no longer under compulsion in respect of those rates, because the rate situation disclosed by the inquiry was subject in its entirety to the provisions of the Federal statute and the administrative control of the Commission. The order of the Commission, therefore, operated to release petitioner, as regards the intrastate rates in question, from the restraint imposed by the State of Texas; and thereupon petitioner became entitled, if it did not choose to reduce its interstate rates, to comply with the order by advancing its Texas rates sufficiently to remove the forbidden discrimination. Its obedience was due to the superior authority, and it ceased to be bound by any inconsistent obligations. Whether petitioner should have applied to the courts for relief in the premises, basing its application upon the Commission's order and the rights of petitioner thereunder, or could advance its Texas rates in the first instance, relying upon the order as a defense against and prosecution under Texas laws, is not for us to determine. It is sufficient to hold, as we do, that petitioner cannot resist the order on the ground of involuntary action, be-

cause the effect of that order was an exemption of these intrastate rates from Texas authority.

As was suggested at the outset, the general question here involved has been presented in numerous cases, more or less closely allied, and is, perhaps, the most conspicuous and important subject of current litigation. In the course of that litigation every decision of possible bearing has been repeatedly cited and every opinion critically examined, whilst the ablest lawyers in briefs and at the bar have exhausted the resources of argument. We can add nothing to what has been so often said, and deem it unnecessary to extend the discussion. In our judgment, the order in question was within the authority of the Commission, and ought not to be set aside.

The petition will therefore be dismissed.

Mack, Judge (concurring). I agree that an intrastate rate voluntarily established by the railroads may be the basis for an order of the Interstate Commerce Commission declaring such a rate to involve an undue prejudice as against an interstate rate, and requiring that the two rates be equalized. I fully agree, also, that Congress has the constitutional power and may by proper legislation grant to the Interstate Commerce Commission authority to prevent undue prejudice in interstate commerce resulting from a rate not in the true sense voluntary, and irrespective of whether it be interstate or intrastate.

In view, however, of the passage cited from **E. R'y Co. v. Interstate Commerce Commission**, 181 U. S. 1, 21 Sup. Ct., 516, 45 L. Ed., 719, and of the decision of this Court in **Atchison, T. & S. F. R'y Co. v. U. S.**, 191 Fed., 856, now pending on appeal in the Supreme Court, I am of the opinion that the Interstate Commerce Commission under

the legislation now in force cannot base such an order upon a compelled rate, whether interstate or intrastate, and whether compelled by competition, by statute, by court decree or by the order of a Commission.

In my judgment, the Texas State rates cannot be treated by the Interstate Commerce Commission as if they were absolutely null and void even if upon direct attack in the State or Federal Courts, they might be nullified and their enforcement permanently enjoined as infringing upon the exclusive power of the Federal government to regulate interstate commerce. In the absence of a judicial decree, temporarily or permanently suspending the force and effect of the Texas rates, the railroads would be compelled to obey them, just as the railroads and the public are required to observe interstate rates duly made and published by the railroads, even though they be such as would be set aside for unreasonableness, unjust discrimination, or undue prejudice on direct attack before the Interstate Commerce Commission.

[4] The order of the Interstate Commerce Commission, therefore, gives only an apparent, but not a real, alternative, either to raise the Texas rates, or to lower the interstate rates; in effect it compels the reduction of the interstate rates to a point far below what the Commission itself considers a reasonable rate, at least until a court of competent jurisdiction shall have enjoined the enforcement of the Texas rates. If the Texas rates here in question must necessarily be held to be involuntary and compelled, I should be of the opinion that the order of the Interstate Commerce Commission must be set aside.

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[5] Inasmuch, however, as there seems to be some basis, though slight, for the view that the failure of the railroads to attack the Texas rates was due to their voluntary or negligent acquiescence therein, and that therefore these rates may be said to have been not compelled, but voluntary, in the sense of having been voluntarily assented to, instead of having been actively attacked, and inasmuch as the conclusions of my Brethren are based in part at least upon this view, I concur, for this reason only, in upholding the Commission's order.

HOUSTON E. & W. T. R'Y. CO. ET AL.

versus

UNITED STATES (INTERSTATE COMMERCE COMMISSION ET AL., Intervenors).

(Commerce Court, April 25, 1913.)

No. 67.

Petition by the Houston East & West Texas Railway Company and others against the United States of America, in which the Interstate Commerce Commission, the Railroad Commission of Louisiana, the St. Louis Southwestern Railway Company, and others intervene. On final hearing. Petition dismissed.

For opinion of Interstate Commerce Commission, see *Meredith v. St. Louis Southwestern R'y Co.*, 23 Interst. Com. Comm. R. 31.

H. A. Scandrett, of Chicago, Ill., and H. M. Garwood, of Houston, Tex., for the petitioners.

Winfred T. Denison, Asst. Atty. Gen. (ThurLOW M. Gordon, Sp. Asst. Atty. Gen., on the brief), for United States.

P. J. Farrell, of Washington, D. C., for Interstate Commerce Commission.

Luther M. Walter, of Chicago, Ill. (R. G. Pleasant, Atty. Gen., and W. M. Barrow, Asst. Atty. Gen., on the brief), for Railroad Commission of Louisiana.

E. B. Perkins, of Dallas, Tex., S. H. West and Roy F. Britton, both of St. Louis, Mo., Daniel Upthegrove, of Dallas, Tex., Joseph M. Bryson, of St. Louis, Mo., and Alex. S. Coke and A. H. McKnight, both of Dallas, Tex., for intervening carriers.

Before **Knapp**, Presiding Judge, and **Hunt, Carland, and Mack**, Judges.

Knapp, Presiding Judge. This case involves the same question as *Texas & Pacific R'y Co. v. United States et al.*, 205 Fed., 380, just decided. For the reasons stated in the opinion in that case, the petition will be dismissed.



Chief Justice Dept. S. S.
FILED

OCT 13 1913

JAMES H. McKENNEY,

Supreme Court of the United States

OCTOBER TERM, 1913

HOUSTON EAST & WEST TEXAS
RAILWAY COMPANY and HOUSTON
& SHREVEPORT RAILROAD COM-
PANY, et al,

Appellants.

No. 537

THE UNITED STATES, THE INTER-
STATE COMMERCE COMMISSION,
et al,

Appeal from the United States Commerce Court

BRIEF FOR INTERVENOR, THE RAILROAD
COMMISSION OF LOUISIANA

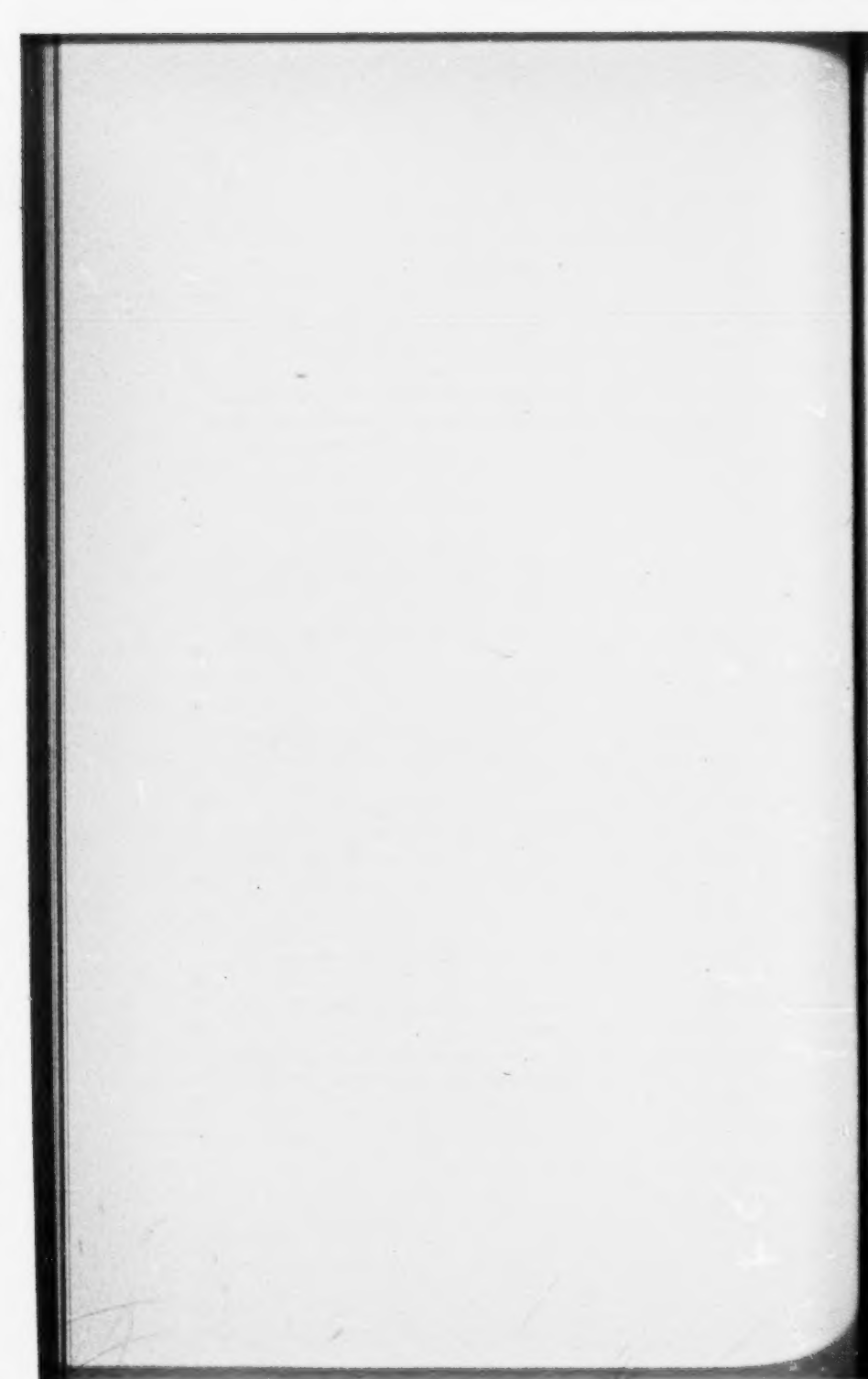
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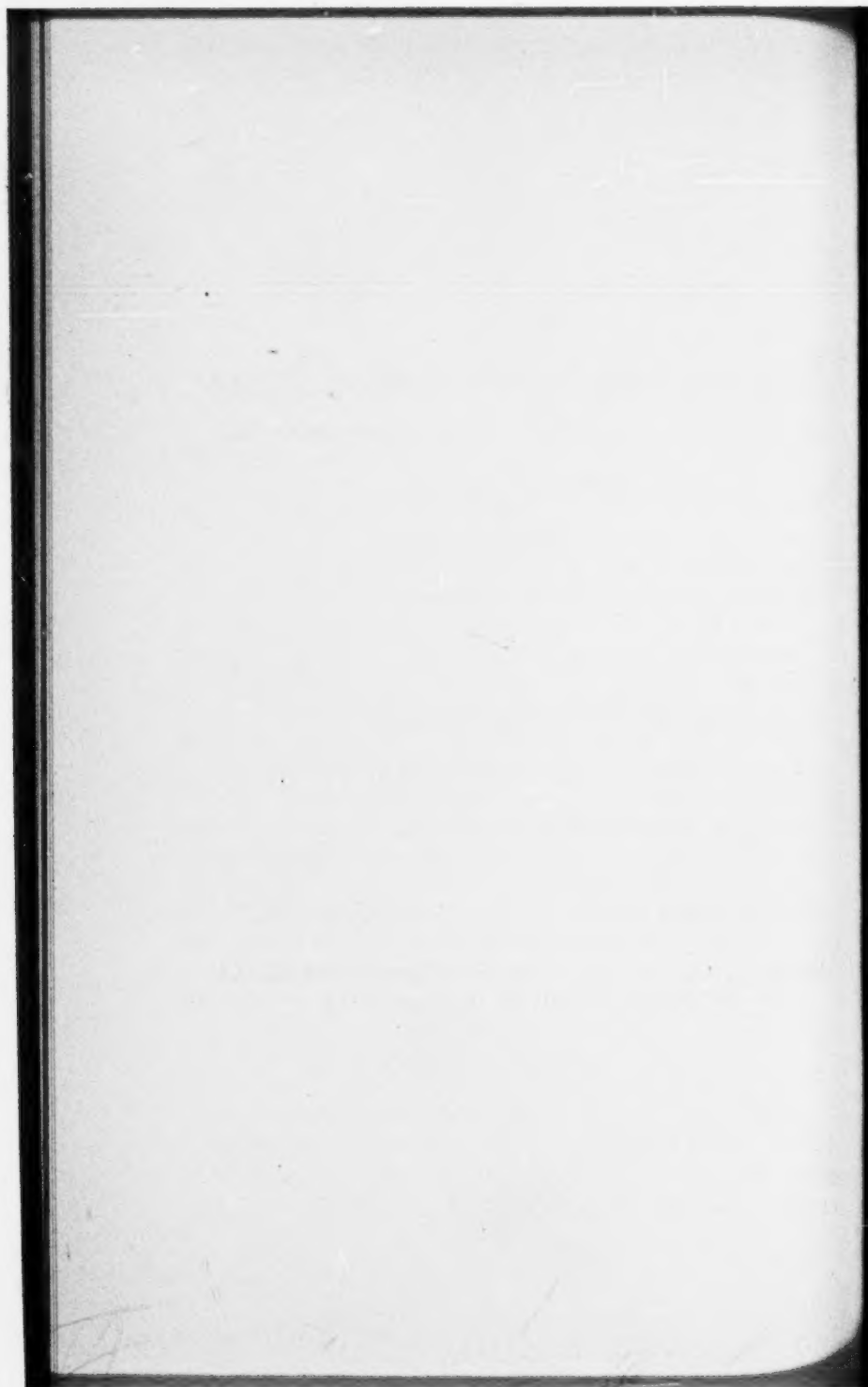
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1913

HOUSTON EAST & WEST TEXAS
RAILWAY COMPANY and HOUSTON
& SHREVEPORT RAILROAD COM-
PANY, et al,

Appellants.

vs.

THE UNITED STATES, THE INTER-
STATE COMMERCE COMMISSION,
et al,

No. 567

Appeal from the United States Commerce Court

**BRIEF FOR INTERVENOR, THE RAILROAD
COMMISSION OF LOUISIANA**

STATEMENT OF CASE.

This case comes here on appeal from a decree of the United States Commerce Court dismissing the petition of the appellants; said petition sought to enjoin an order of the Interstate Commerce Commission (Rec. 57) which

required the appellants (defendants before the Commission) to desist, on or before May 1st, 1912, and for a period of not less than two years thereafter, to abstain from exacting any higher rates for the transportation of any article from Shreveport, Louisiana, to Houston, Texas, and points intermediate thereto, than were contemporaneously exacted for the transportation of such article from Houston, for an equal distance towards Shreveport, said relation of rates having been found by the Commission to be reasonable. From said decree dismissing the petition appellants appealed to this court (Rec. 106-110), and assign various errors, (Rec. 107).

On March 8th, 1911, the Railroad Commission of Louisiana, acting under instructions from the Legislature of that state, filed a petition with the Interstate Commerce Commission against the appellants, Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company, the intervenors St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, and Missouri, Kansas & Texas Railway Company of Texas, and also Eastern Texas Railway Company, Texas & Pacific Railway Company, Gulf, Colorado & Santa Fe Railway Company and International & Great Northern Railroad Company, complaining that rates from Shreveport, La., over the lines of the carriers named, to points of destination in eastern Texas, were unjust and unreasonable, in violation of Section 1 of the Act to regulate commerce, and subjected shippers from Shreveport to such destinations to unjust discrimination and gave an undue preference to shippers from Houston, Dallas, Waco, Fort Worth and other points in Texas.

The prayer of the complaint was that the Interstate Commerce Commission require the same basis of rates between Shreveport and east Texas points as was accorded by the defendants to Texas competitors of Shreveport interests for the same distances.

The Interstate Commerce Commission, after due and regular hearing, made its report and order on March 11, 1912, (Rec. 19-60) 23 I. C. C. 31-68. The Commission was not unanimous, there being six separate opinions, the majority opinion by Commissioner Lane (Rec. 21) and concurring opinions by Commissioners Prouty (Rec. 36) and Clark (Rec. 39), while dissenting opinions were written by Commissioners Clements (Rec. 40) Harlan (Rec. 41) and McChord (Rec. 43).

In its report and order the Commission found that the class rates complained of out of Shreveport to points on lines of the Texas & Pacific and of the appellants were unjust and unreasonable; these rates were very materially reduced and the order prescribed reasonable class rates, as maximum rates, from Shreveport to the several stations in eastern Texas on the lines of the appellants and the Texas & Pacific Railway.

The Commission further found that the relation of rates upon articles taking commodity rates was unjust and unreasonable by reason of the fact that a much higher basis, mile for mile, was applied from Shreveport than from competing points in Texas to destinations of the same distance with no dissimilarity in transportation conditions. The carriers were required to maintain no higher commodity rates mile for mile from Shreveport

to Texas points, than were maintained from Dallas and Houston to points an equal distance therefrom in eastern Texas.

The third provision of the order required the same rules and practices concerning the concentration of Texas cotton at Shreveport as was contemporaneously observed by the carriers on cotton concentrated in Texas.

The carriers have abandoned their attack against the first and third clauses of the order and here challenge only that portion of the order which requires commodity rates from Shreveport to Texas destinations to be equalized with rates from competing Texas points.

While the opinion of the Commerce Court expressly states that "the Commission has found, in effect, that petitioner's interstate commodity rates from Shreveport to these Texas destinations are reasonable rates for the service rendered; that is, a rate which conforms to the first section of the Act, and which, therefore, petitioner may justly and legally charge" we have looked in vain in the Commission's opinions for any such statement. Such an impression might be gained from the fact that the Commission did not, in so many words, require the carriers to reduce the commodity rates from Shreveport to the level of the Texas commodity rates, and permitted the carriers to correct the unjust discrimination, in part at least, by an increase in the Texas commodity rates. But the order of the Commission goes further; it provides that in equalizing the interstate and state rates the interstate rates must not exceed the scale of class rates prescribed in the

first portion of the order. The important fact is, *the commodity rates complained of by the Railroad Commission of Louisiana exceed the class rates prescribed by the Commission from Shreveport to Texas points.* To the extent that the commodity rates complained of exceed class rates found reasonable by the Commission, the commodity rates were in fact found to be unjust and unreasonable, as well as unjustly discriminatory.

THE STATUTE.

Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or

Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.* * * * * *

Sec. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other

person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

STATEMENT OF FACTS.

The territory in Texas to which the Commission has established rates is what is known as East Texas. Shreveport is one of the oldest distributing points west of the Mississippi River. Long before railroads had been built out of Shreveport to the west the supplies of all Texas and of many other states north and west were hauled by team from Shreveport. With the advent of the railroad these supplies moved by rail. Until the year 1898, Shreveport enjoyed a large share of the Texas business.

Shortly after the Railroad Commission of Texas was established that body adopted a policy intended to build up jobbing centers in that state. This policy was made effective in two ways, first by the establishment of a flat

mileage rate, and second by a heavy reduction in local or restricted rates in order to meet what the Texas Commission regarded as an unjust reduction in interstate rates upon products which were sold by Texas merchants.

The reports of the State Commission of Texas to the Governor show the establishment of this policy and the record before the Interstate Commerce Commission contains emergency orders of the Texas Commission covering a large tonnage of many and varied articles of transportation; each of these orders almost without exception states that the purpose of the same was to remove an unjust discrimination against the business interests of citizens of Texas resulting from a reduction in interstate rates and from the carriers' refusal to increase interstate rates. In many instances, these emergency rates were so low as to be less than the cost of service as the evidence before the Commission shows. No final contest in the courts was made upon any of the class or commodity rates so established. The carriers complied with all the requirements of the Texas Commission, although such emergency rates were concededly to the disadvantage of the interstate shipper.

For the purposes of this brief we set forth fully extracts from the Texas Commission's reports showing the policy above referred to. From these reports it clearly appears that appellants have been compelled, either through fear or favor, to establish the adjustment found unlawful by the Commission.

In the Third Annual Report of the Texas Commission, page VII, it was said :

The stability of interstate rates is also more secure under the indirect influence of the Commission.

The policy of this Commission is to preserve an equitable and just relation between state and interstate rates to competitive points in Texas, and to preserve to the people of Texas the advantages of their location. In pursuance of this policy, the Commission has determined to meet reductions in interstate rates by a corresponding reduction in state rates on any given article manufactured or produced in this state, particularly if it appears that the purpose of the cut in interstate rates is to deprive the home product of its legitimate market. This purpose has been repeatedly announced to the managers of railroads in Texas, and has no doubt exercised a considerable influence in maintaining interstate rates.

In the Fourth Annual Report, for the year ending June 30, 1895, the Commission states its purpose frankly and fully. We quote from pages 15, 16 and 17:

The Commission's policy has been to encourage the interests of Texas merchants and manufacturers, and to do this reductions of rates have frequently been necessary. The figures will show that, as a general proposition, it is more profitable to a Texas road, in the transportation of a given quantity of goods in less than carloads, to make the haul wholly within the limits of the State than to transport the same quantity of like goods as one of a number of connecting lines operating from points beyond the limits of the State, the difference being that the divisional part of a Texas road of a through interstate less than carload rate is usually less than the local less than carload rate it receives on shipments from one point in Texas to another, added to the divisional part the carrier receives on carload shipments to Texas distributing points. The business of Texas merchants and

manufacturers being stimulated and increased, and the earnings of the companies being augmented by doing more Texas business and less outside business, it is not improbable that the Commission's policy has had something to do in producing the result of larger earnings upon lower local rates, when it is considered that the reductions which have been made have been made cautiously, with the view of not diminishing the revenues of the carriers, but with regard to the fact that upon lower local rates our roads can earn more money than they get upon the divisions of interstate rates. This idea is fortified by the fact that for the year ending June 30, 1895, business originating in Texas increased 3 per cent more than interstate traffic destined to Texas points. In advancing this idea, none of the benefit is ascribed to the general merchandise tariff elsewhere discussed and which did not take effect until August 6, 1895, after the time covered by the reports of the companies. That the general merchandise tariff will operate in the same beneficial manner, in improving the business of Texas merchants and manufacturers, with benefit to the carriers, notwithstanding reduced local rates, we do not doubt.

* * * * *

This Commission in establishing rates on freight in this State was controlled in a large measure by the rates made on interstate shipments, which it could not control. Our action in making rates in the past has been seriously embarrassed by the lower rates, relatively, which were made on commodities and merchandise shipped into and out of the State, than those which prevailed on shipments wholly in the State; and also by the failure of the railroads to maintain even lower rates on interstate shipments. These facts will explain, in part at least, the necessity which com-

pelled us to reduce rates in many instances.

For the most of the time since this Commission has been in existence, the interstate rates have been so made as to make but little difference between carload and less than carload rates, and in this way to make cities outside of this State the jobbing centers for our people, and in this way also to seriously embarrass or to prevent manufacturing in this State, and to prevent in a large measure the merchants of this State from doing a wholesale business. To illustrate this view, the carload rates on interstate shipments to all the common-point territory in this State are the same. Now if the less than carload rates are the same or nearly the same on such shipment to the same points, it will be seen that when our merchants pay the carload rate on such shipments, and are then obliged to pay our local state rates on sending out merchandise, they would be unable to compete successfully with the less than carload rates from points outside of Texas. The constant effort of this Commission from its earliest organization has been to secure a correction of this wrong done to the merchants and manufacturers of this State. And it affords us much satisfaction to be able to state that by the action of the Southwestern Traffic Association in May last they made a moderate reduction in the freight rates on carloads of a considerable number of commodities, which, by widening the difference between carloads and less than carloads, met to some extent the expressed wishes of this Commission in that respect, and was a considerable relief to our wholesale merchants and manufacturers.

While recognizing the benefit of the adjustment made by the Southwestern Traffic Association on June 1, 1895, yet it having been made to appear to us that the arrangement did not afford as complete re-

lief as was demanded by the interests of Texas merchants and manufacturers upon certain articles, as a further remedy we promulgated commodity tariff No. 16, which will be found in Exhibit No. 1 of the Appendix, and which comprises said articles, fourteen in number. By this tariff the distance to which our merchants and manufacturers can ship the goods covered by said tariff in less than carload quantities in competition with outside merchants and manufacturers has been extended, and as a consequence home enterprises have been fostered; and not only have such enterprises been benefited, but retail merchants and consumers doing business and residing near jobbing and manufacturing centers have been correspondingly benefited. That all has been done that should be done to promote the interests of home jobbers and manufacturers, with justice to outside competitors, we do not assert; yet that much has been accomplished cannot be gainsaid.

We trust that the Southwestern Traffic Association, of which the Texas roads are members, will not fail to accord to Texas commercial interests the fair treatment to which they are entitled by the adoption of further measures to place our merchants and manufacturers on a basis of equality with those outside of the State.

That the Texas Commission was not concerned with the amount of the rate but rather with the relation of the state to the interstate, appears from the following statement in the same report, page 19:

This Commission has often stated to the freight agents and traffic managers in their meetings with it, that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments, this Commission would do all in its power, by

its rates, to secure them reasonable revenue on their railroad investments in this State. And we now repeat that statement. But this suggestion contemplates good faith on both sides in the making and maintenance of rates.

In the Fifth Annual Report, under the heading of "State and Interstate Rates Relatively," that Commission, on pages 5 and 6, emphasizes its policy of giving the Texas markets to Texas jobbers:

To the consumer, upon whom ultimately falls the payment of freight rates, which are incorporated with the prices of all articles he uses, it is of little moment, apart from his general interest in the advancement of the prosperity of his State, whether the retailer, from whom he obtains his supplies, patronizes a Texas jobber or an outside jobber. To the retailer it is a matter of great interest, inasmuch as, if there are markets near at hand from which he can procure his goods, he not only is in a better situation to establish and preserve his credit with the wholesaler, between whom and himself there is often an intimate acquaintance, than he would be if he had to do business with strangers residing in other states, but he is relieved from the necessity of keeping in stock so large a quantity of goods as he would be compelled to keep if his market was more remote from his business, being enabled, by virtue of proximity, to have goods shipped to him from his neighboring jobber in time to replenish his stock to meet the demands of his trade; whereas, if he had to rely upon a more distant jobber, the delay in receiving goods would be incompatible with the same methods of business.

But there is another view of the question that is still more important. To Texas as a whole it is of the most vital concern that there should be within her

limits, at proper places, jobbing and manufacturing establishments. Besides adding to the citizenship of the State a desirable population, and furnishing employment to persons already in our midst, and enhancing the taxable values of the State, and, as a consequence, under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men, in Texas, having the capital to engage in a wholesals business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his State.

Some of the Texas lines of railway, constituting parts of interstate systems of railway interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce all Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing.

* * * * *

This Commission has always had in mind the securing of relatively just state and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders. And, as shown by its last annual report, it has secured substantial benefits in this line. Besides what is there stated, it has, when its attention has been directed to changes in interstate rates, made corresponding changes in state rates whenever it could do so before the restoration of interstate rates. Oc-

casionaly it has transpired that reductions have been made in interstate rates, but before the Commission could give ten days' preliminary notice required by law, and twenty days' notice after hearing before rates prescribed by the Commission can take effect, the interstate rates have been restored. In recommendations of legislation, the Commission in another place has suggested that the law be amended so as to enable the Commission to act in less time than is now necessary to establish a rate. To meet cuts in interstate rates such legislation is requisite.

Late in 1896, the various railroad companies in Texas made application for an increase of all rates upon articles transported within the State of Texas. We quote at length from the last mentioned report, pages 8, 9 and 10, from which the purpose of that Commission to regulate interstate traffic is clearly apparent:

On the 15th day of September, 1896, nearly all of the railroad companies of Texas united in an application for an increase of all rates upon all articles transported upon railroads within the limits of the State. The principal ground of the application was that existing rates were not fairly compensatory, notwithstanding, as alleged, the companies had obtained all the revenue to which they were justly entitled out of interstate business. The Commission set the application down for hearing on the 20th day of October, 1896, but upon request of the applicants, accompanied by the statement that they could not within the time allowed collate the information demanded by the Commission in its notice of hearing, the investigation was postponed until the 4th day of December, 1896, when subsequent request of the applicants, based upon the same reason, the investigation was postponed until the 4th day of December, 1896, when the matter was regularly taken up. It soon being discov-

ered, in view of the requirement of the Commission, that the testimony should all be under oath from witnesses having personal knowledge of the facts, that the applicants were not ready to proceed, the hearing went over to the 8th day of December, 1896, when the applicants requested that the investigation be continued until further notice. The Commission consented to the continuance on the condition that the applicants would take up with it and consider propositions looking to a more satisfactory relative adjustment of state and interstate rates. The Commission in the setting of the application for hearing had not merely embraced in its notice the proposition of applicants to increase rates, but had also announced in the notice that the Commission would in connection therewith, take up and consider the question of the proper readjustment, with respect to each other, of the rates applying within the State of Texas and the interstate rates to which petitioners were parties, by increasing or diminishing, so far as may be necessary to effect such readjustment, the rates now applying on freights transported between points in the State of Texas, and by insisting that petitioners will increase or reduce the interstate rates now existing and to which petitioners are parties, so far as may be necessary to secure such readjustment.

With the view to the proper determination of said subjects, the Commission in its notice submitted for discussion a number of inquiries, so framed as to elicit all the information necessary for deciding whether existing state rates are just and reasonable, whether existing interstate rates are just and reasonable, and whether the existing interstate rates are so adjusted as to operate fairly to the producers, manufacturers, merchants and consumers of Texas. The Commission did not feel disposed, when it gave the notice in the

form stated, nor has it ever been inclined, to deny to the railroad companies such rates as are reasonably compensatory, even though to do so would necessitate an increase in rates. Yet, as a condition precedent to anything like a general increase in state rates, the Commission was, and is, determined that the railroad companies shall show that they are receiving reasonable compensation for the transportation by them of interstate freights, in order that it may be seen by the Commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. Besides, knowing from experience that if the Texas lines unitedly exert themselves earnestly to secure any kind of readjustment of interstate rates, they are capable of accomplishing much in that direction, we deemed the occasion of the hearing of their application for an increase of state rates opportune for insisting that they endeavor to secure a more satisfactory arrangement of interstate rates. In making the demand there was no injustice to the railroads, for viewed simply as roads operating in the State, it is to their interest to favor the policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from the jobbing houses in such cities in less than carload quantities among the retailers, as the freight charges they receive on local less than carload shipments in the State, added to what they receive in the division of through rates on carload shipments to the Texas jobber, usually amount to more than they receive in the division of through rates on less than carload shipments from a jobber outside the State to a retailer in the State; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the up-

building of Texas jobbing and manufacturing enterprises, the interest of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interests of the Texas lines are too often regarded. Here lies the main difficulty, in our opinion, in securing a just arrangement of interstate rates. It can be met either by those lines which are not dominated by outside influences taking a firm stand and co-operating with this Commission to compel the other lines to act justly towards Texas interests, or, if adjustments can not be made by consent, by the Interstate Commerce Commission, with an intelligent grasp of the situation, when appealed to, making the proper adjustment.

The Commission is now preparing to take up with the Texas lines propositions looking to a readjustment of interstate rates in accordance with the views announced by it when the application of the railroad companies for increase of rates was postponed as above stated.

In order that its power might be greatly increased so as to control the interstate rates by directly penalizing the carriers on their local rates, that Commission made certain recommendations to the Texas Legislature. We quote from one of these recommendations, page 27 of the last named report:

Under the Interstate Commerce Law, carriers subject to that law and engaged in interstate transportation are authorized to reduce any rate upon three days' notice to the Interstate Commerce Commission, and they are empowered to increase any rate or rates upon ten days' notice to that Commission. The mischief we have in mind results from the reduction of interstate rates. Upon making reductions, after three

days' notice to the Interstate Commerce Commission, interstate lines transport for non-resident jobbers and manufacturers the articles upon which the rates have been reduced, to dealers in Texas. By reason of the reduced rates, the prices of the articles are cheapened to the dealers who are supplied with them during the period of low rates; and, taking advantage of the situation, such dealers soon stock up heavily with the articles. The Texas jobbers and manufacturers, whose rates have been made certain differentials lower than interstate rates, before their reduction, unexpectedly find themselves unable to compete with non-resident jobbers and manufacturers in the sale of the article upon which the interstate rates have been diminished, the differentials established under certain conditions being no protection to them against the suddenly changed conditions. Before the Texas jobbers and manufacturers can be relieved, thirty days must elapse; and generally within that time the injury has all been done, and interstate rates are restored by the time our rates can take effect. Invariably when there are serious reductions in interstate rates such reductions are intended to be temporary, and even if this Commission should take no action to meet the rates as cut, the interstate rates are restored after a brief season. This operates to the detriment not only of the Texas jobber and manufacturer, but also of all retailers who happen to be carrying a full stock of the article on which the rate is cut at the time it is made, and who are unable to purchase an increased supply of the articles even at diminished prices, as well as of all retailers who purchase the article after rates have been restored, because in both cases retailers who were not in a situation to avail themselves of the low prices resulting from the cut rates are at a disadvantage in competing with those who could and did get the benefit of the lower prices.

The cutting of interstate rates by one line leads always to the cutting of rates by competing lines, thus engendering rate wars, which always involve serious losses to the conflicting parties as well as to the general public.

The result of this recommendation was the passage of the emergency rate law of Texas, by which the various emergency orders heretofore referred to were published; this law expressly authorizes the State Commission without notice or hearing to establish such rates as in its judgment are necessary, and is set forth as exhibit "B" to the petitions herein. (Rec. 60.)

The Texas Commission followed the policy of instituting suits for heavy penalties against the carriers for various violations of the law and then, after settling some of them, permitting the remaining suits to lie dormant upon the various court dockets of that State, later to be actively pressed if the carriers failed to do as the Texas Commission requested. We quote from the Seventh Annual Report for the year ending June 30, 1898, page 3:

We mention further that by the aid of that appropriation this Commission had caused investigations to be made which showed that a number of the principal railroads of this State had violated the law, in the manner stated, a great many times. We also stated that up to the date of our last report, out of the number of cases reported to the Attorney-General, the offenders had plead guilty in ninety-five cases, and had paid a penalty of five hundred dollars in each case, without litigation, the companies composing what is known as the Southern Pacific System having paid \$25,000, the International & Great Northern Railroad Company \$10,000, and the Missouri,

Kansas & Texas Railway Company of Texas \$12,500. It is proper to state that as to some of these companies many more instances of violations were found than were thus settled for, but the remaining cases have not been dismissed, being merely held in abeyance subject to further proceeding in the event that such companies again violate the laws. And it is also proper to state in this connection that this arrangement had at the time, and now, the full approval of this Commission.

The foregoing excerpts from the Annual Reports of the Texas Railroad Commission amply justify the contention we are here making, viz., that a direct and controlling influence has been exerted by the Texas Commission upon interstate rates by threats of reprisal, either in the way of reducing the local rates in the State of Texas or by fines and prosecutions for violation of some of the numerous regulating statutes of the State of Texas.

The Court will note that we have made no reference to recent annual reports of the Texas Commission. At the time the earlier reports were published there was little public attention given to the respective spheres of regulation by the State as against the Federal power. With the growing importance of that question the Texas Commission realized that it had been too frank and so thereafter contented itself with simply exercising the same activities in carrying out the same policy which had marked its earlier career, without proclaiming from the housetops what it was doing.

The carriers have testified in this case that they have been governed by the Texas Commission's wishes in a large degree in making interstate rates and even expressed a

fear that if the Interstate Commerce Commission reduced the rates from Shreveport as requested by the Railroad Commission of Louisiana, the Texas Commission would take action to reduce the State rates so as to maintain the present relative adjustment.

The opinion of the Commission quotes in full a letter by Chairman Mayfield of the Texas Commission to the Secretary of the Progressive League of Marshall, Texas, (Rec. 22). The letter is self explanatory and speaks in no uncertain language; reference is made therein to page 263 of the 19th Annual Report of the Texas Commission, containing the so-called Texarkana rate adjustment. This adjustment strikingly illustrates the policy of that Commission, to which we have made extended reference. In establishing a scale of jobbing rates, eighty per cent of the regular Texas distance tariff rates on a long list of articles, an exception was made under which the special rates were not applicable from Texarkana, Texas, or from Waskom, Texas, just across the line from Shreveport (Rec. 63). The purpose is obvious; if these rates had been made applicable from Waskom and Texarkana, Texas, the shippers of Shreveport, Louisiana, and Texarkana, Arkansas, could have gotten the benefit of them by draying their traffic across the state line. Some question having arisen as to the interpretation of this order, the State Commission afterwards issued a ruling that "rates provided in this adjustment are not applicable on shipments to or from Texarkana, Texas." 19th Report, Railroad Commission of Texas, 263.

The position of the Railroad Commission of Texas as set forth in their letters and reports is wholly re-

sponsible for the difference in charges exacted from shippers from Shreveport into Texas, as compared with charges for a similar haul in Texas, and we have no doubt that but for the action of the Texas Commission appellants herein would have established the same mileage rates over their lines of railway upon traffic from Shreveport as upon traffic wholly within the State of Texas. Appellants frankly admitted before the Interstate Commerce Commission that circumstances of transportation from Shreveport west into Texas are not different from those existing when the movement is from Dallas or Houston east for a similar distance over the same line of railroad. Having admitted that the cost of transportation was the same in each service the carriers justify their difference in charges solely by the fact that they were compelled by the Railroad Commission of Texas to publish a lower scale than they otherwise would have established.

The discriminations pronounced unlawful by the Act to regulate commerce are all those by any carrier engaged in interstate commerce which are unjust in their effect upon interstate commerce. The record in this case abundantly shows a restriction of trade from Shreveport into Texas that is well-nigh prohibitory. We have the expressed intention of the Railroad Commission of Texas to prohibit as far as it could the trade of East Texas being had with points outside the State of Texas. It undertook to build a Chinese wall across which no trade or commercial intercourse should be carried on if the wants or markets of Texas people could be satisfied with Texas products or if Texas products could find a market within Texas. It amounted practically to commercial secession. The rule

that the interference must be direct and not merely incidental and unimportant does not conflict with the facts in this case.

The discriminatory character of the relative rate adjustment condemned by the Commission is illustrated in the rate tables printed in the appendix to the report of the Commission in this case, 23 I. C. C. 65-66 (Rec. 52-56). We there find rates paid by the wholesale grocers, saddlery and vehicle dealers, furniture and stationery houses at Shreveport compared with the rates paid by their competitors in Texas for similar distances and into competitive jobbing territory. The wholesale grocers of Shreveport ought to be able to sell sugar in Center, Texas; but if they do so they must pay a rate of 35c per hundred pounds for a haul of 65.6 miles. There are competing wholesale grocers at Longview, Texas, 67.8 miles from Center, who enjoy a State Commission made rate of but 26c. On flour the Shreveport jobber must pay 35c to reach Center, while from Longview with a greater mileage, the rate is but 25.5c. The rate from Shreveport to St. Augustine, Texas, a distance of 85 miles, is 39c both on sugar and on flour; from Beaumont, 120.5 miles, the rate on sugar is 38c and on flour is only 29c. A dealer in vehicles in Dallas, Texas, can ship a buggy to Elysian Fields, Texas, a distance of 155.2 miles for 56c; his competitor at Shreveport, only 53.3 miles from Elysian Fields, pays \$1.57½—three times the rate for one-third the distance. Furniture is shipped from Dallas to Longview, a movement of 124 miles wholly within the State of Texas for 24.8c, while for the interstate haul from Shreveport to Longview, only 65.7 miles, the rate is 35c; for fifty per cent

of the distance the Shreveport dealer, because he is an interstate shipper, pays one hundred and fifty per cent of the rate of his intrastate competitor.

These rates are only illustrative. In the whole schedule of commodity rates there is no exception to the rule worked out by the Texas Commission that the Texas jobber shall have *a less rate for an equal or greater distance* than his interstate competitor at Shreveport.

Moreover the record before the Interstate Commerce Commission herein not only demonstrated conclusively the unfairness of the rate structure, but contains much testimony by the shippers of Louisiana showing the actual effect of this scheme of rates upon their business, and upon commercial conditions in eastern Texas. Merchants and dealers in a wide range of articles gave forceful testimony of their exclusion from Texas markets which they are fairly entitled by their location to reach on even terms with shippers and dealers at Dallas and other Texas cities. It would unduly increase the length of this brief to set forth in detail the facts appearing of record before the Commission. We do not understand that it is the province of the Court to examine into the facts where there was substantial evidence in support of the Commission's finding. The testimony before the Commission shows the effect of the adjustment which the Commission found to be unlawful and which its order will remove.

The Texas Commission has contended that Shreveport enjoys an advantage in its inbound rates, and indeed that contention was made by the appellants in their case before the Commission. If such were the case, a discrimination of that character can be remedied by an action before the

Interstate Commerce Commission involving the lawfulness of the inbound rates of Texas in their relation to the Shreveport rates. Such a situation is not to be corrected by a mal-adjustment of the outbound rates. In further reply to this contention we need say no more than to call the attention of the court to the decision of the Interstate Commerce Commission upon the complaint of the *Railroad Commission of Texas vs. Atchison, Topeka & Santa Fe, et al*, 20 I. C. C., 463, wherein upon a voluminous record the rates to Texas common points were fixed by the Commission on a basis prescribed as reasonable and non-discriminatory.

In its report the Commission found as follows (Rec. 36):

That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such points under substantially similar conditions and circumstances.

That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

The Commission has found as a matter of fact that the discrimination complained of was unjust and the preference undue. It also found affirmatively that the reasonable relation of rates is equal charges for equal distances

from Shreveport and from Dallas or Houston to points of destination in eastern Texas.

ARGUMENT.

The report of the Commission succinctly and clearly sets forth the law.

As we understand this case, it presents, under the decisions of this court, but one question. When the case was decided by the Commerce Court there were, perhaps, two questions for decision. First, has Congress the power under the Constitution to confer jurisdiction upon the Interstate Commerce Commission to make the order complained of; second, has it conferred such jurisdiction? As we understand the decision in *Simpson, et al, v. Shepard*, (the Minnesota rate case) 33 Sup. Ct. Rep. 729, the first question—as to the power of Congress—has been decided by this Court in the affirmative, and any doubt that may have remained after the long line of cases sustaining the power of Congress in the regulation of interstate commerce and all the agencies thereof, was completely dispelled.

The second question as to whether Congress has given the Commission jurisdiction to make the order complained of herein, is still open. We set forth pertinent portions of the Minnesota decision:

If a state enactment imposes a *direct burden* upon interstate commerce, it must fall regardless of Federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which, in the absence of Federal regulation, should be free. If the acts of Minnesota constitute a direct burden upon interstate commerce, they would be invalid without regard to

the exercise of Federal authority touching the interstate rates said to be affected. On the other hand, if the state, in the absence of Federal legislation, would have had the power to prescribe the rates here assailed, the question remains whether its action is void as being repugnant to the statute which Congress has enacted.

* * * * *

(3) When Congress, in the year 1887, enacted the Act to regulate commerce (24 Stat. at L. 379, chap. 104, U. S. Comp. Stat. Supp. 1911, p. 1284), it was acquainted with the course of the development of railroad transportation and with the exercise by the states of the rate-making power. An elaborate report had been made to the Senate by a committee authorized to investigate the subject of railroad regulation, in which the nature and extent of state legislation, including the commission plan, were fully reviewed (Senate Report 46, submitted January 6, 1886, 49th Congress, 1st session). And it was the fact that beyond the bounds of state control there lay a vast field of unregulated activity in the conduct of interstate transportation which was found to be the chief cause of the demand for Federal action.

Congress carefully defined the scope of its regulation, and expressly provided that it was not to extend to purely intrastate traffic. In the 1st section of the Act to regulate commerce there was inserted the following proviso:

"Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country, from or to any state or territory as aforesaid."

When in the year 1906 (act of June 29, 1906,

chap. 3591, 34 Stat. at L. 584, U. S. Comp. Stat. Supp. 1911, p. 1288), Congress amended the act so as to confer upon the Federal commission power to prescribe maximum interstate rates, the proviso in § 1 was re-enacted. Again, in 1910, when the act was extended to embrace telegraph, telephone and cable companies engaged in interstate business, the proviso was once more re-enacted, with an additional clause so as to exclude intrastate messages from the operation of the statute. (Act of June 18, 1910, Chap. 309, 36 Stat. at L. 545.) The proviso in its present form reads:

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state, and not shipped to or from a foreign country, from or to any state or territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one state, and not transmitted to or from a foreign country, from or to any state or territory, as aforesaid."

There was thus excluded from the provisions of the act that transportation which was "wholly within one state," with the specified qualification where its subject was going to or coming from a foreign country.

It is urged, however, that the words of the proviso are susceptible of a construction which would permit the provisions of § 3 of the act, prohibiting carriers from giving an undue or unreasonable preference or advantage to any locality, to apply to unreasonable discrimination between localities in different states, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively. If it be assumed that the statute should be so construed (and it is not necessary

now to decide the point), it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission, and not for the courts. The dominating purpose of the statute was to secure conformity to the prescribed standards through the examination and appreciation of the complex facts of transportation by the body created for that purpose; and, as this court has repeatedly held, it would be destructive of the system of regulation defined by the statute if the court, without the preliminary action of the Commission, were to undertake to pass upon the administrative questions which the statute has primarily confided to it. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Ann. cas. 1075; *Baltimore & Ohio R. Co. v. United States*, 215 U. S. 481, 54 L. ed. 292, 30 Sup. Ct. Rep. 164; *Robinson v. Baltimore & Ohio R. Co.*, 222 U. S. 506, 56 L. ed. 288, 32 Sup. Ct. Rep. 114; *United States v. Pacific & A. R. & Nav. Co.*, 228 U. S. 87, ante, 443, 33 Sup. Ct. Rep. 443. In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the act; and no action of that body is before us for review.

An examination of the opinion of the Commission shows that the Interstate Commerce Commission has not attempted to fix rates for transportation in Texas. Whatever effect the order complained of in this case may have

on intrastate rates is wholly indirect and inconsequential, so far as the power of the Commission is concerned. What the Commission has done is to exercise this power to remove a discrimination, which it is not challenged would, if voluntarily done by the carriers, amount to what is denominated by the law an *unjust* discrimination. The fact that a full compliance with the Commission's order may cause a change in state rates cannot bar the Commission from dealing with the situation so as to secure justice and equality among shippers. The order is not directed against transportation wholly within the State of Texas. And the order does not of necessity "apply" to the state rate. It has been held by this Court that the State Commission may prescribe rates for transportation within the state, although such rates may indirectly—but not directly—affect interstate rates. There is nothing inconsistent between such power in the State Commission and power in the Interstate Commission to remove an unjust discrimination, although such removal indirectly affects state rates. This is as we understand the law, and along that line is the expression of Commissioner Prouty in the concurring opinion (Rec. 38):

The first section of our Act provides that it shall not "apply to the transportation of passengers or property wholly within one state," and it is said that we are thereby debarred from dealing with this situation since, as can not be denied, we affect the state rate. But our order is not directed against the state rate and does not of necessity "apply" to it, because it indirectly controls that rate. If this be not so then the converse must all the more be true and no state commission can establish a rate which directly or in-

directly affects an interstate rate, which is not in my opinion the law.

It is well settled that there is a broad field within which the state may act in the regulation of its transportation facilities until the federal government has exercised its authority under the commerce clause. A state can not apply its rate of transportation to that portion of an interstate movement which takes place within the territorial limits of a state, because the entire movement has been placed under the jurisdiction of the federal government and that jurisdiction is exclusive; but the state may, I think, establish the rate of transportation from point to point within its limits, although the effect of this is to indirectly require a change in interstate rates upon which Congress has not acted. When the federal authority does act, then the state cannot by its action interfere, for in case of actual conflict the state must yield, but the mere enactment of the act to regulate commerce is not a federal declaration that the interstate rates voluntarily established by carriers which have not been passed upon by the Interstate Commerce Commission are reasonable.

Our third section declares that no carrier subject to the act shall be guilty of undue preference and lays upon this Commission the duty of removing such preference when found to exist. It is no valid reason against the exercise of that authority that as a result some state rate must be changed.

In the Minnesota rate case, the railroads removed the discrimination against interstate shippers, resulting from their compliance with the orders of the Minnesota Railroad Commission, by extending the state-made rates to interstate traffic. They contested the Minnesota rates as unreasonable *per se*, and added, as a cause for declar-

ing them unconstitutional, the charge that they violated the federal constitution by directly influencing interstate rates. There was no contention by the interstate shipper that he was unjustly discriminated against by the action of the carriers in complying with the rate orders of the State of Minnesota.

In the present case, quite the contrary state of facts exist. Here the railroads operating in Texas, and running into Louisiana, complied with the Texas made rates, but did not extend such rates to interstate traffic, leaving the interstate shippers in Louisiana at a tremendous disadvantage. The discrimination thus created by the compliance by the carriers with the orders of the Railroad Commission of Texas, continued to exist, until removed by the order of the Interstate Commerce Commission, declaring it unjust. The duty rests upon the carrier of treating all it serves alike, and if discriminations so flagrant as those against Shreveport shippers seeking to enter Texas territory may exist, and be excused or tolerated on account of the declared policy of a State to make its intrastate rates so low as to favor its own citizens against those of another state, then both the spirit and purpose of the interstate commerce act is completely defeated.

We further find in the decisions of this court an interpretation of the proviso in Section 1 of the Act to regulate commerce and an affirmation of the power of the Commission to make an order which requires disclosure of all business of the carrier, although less than one per cent of its traffic is subject to the Act to regulate commerce. In the water line cases, *Interstate Commerce Commission vs. Goodrich Transit Company*, 224 U. S.

194, this Court, after quoting the provisions of the Act, as well as the proviso, said:

The proviso, at the end of the section, that its terms shall not apply to the transportation of passengers or property wholly within one State was inserted for the purpose of showing the congressional purpose not to undertake to regulate a commerce *wholly domestic*.

The Commerce Court had held that the orders concerning the report and auditing would be lawful respecting the interstate business done by carriers in connection with the railroads, but in requiring a report concerning the business not subject to the Act to regulate commerce, the Commission exceeded its authority and it therefore granted the prayers for orders of injunction and ordered a recasting of the form of the report so as not to require information as to intra-state traffic and port to port traffic not subject to the Act.

This Court further said in the course of the opinion:

It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in its accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission, is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning business methods of the corporations subject to the Act that it may properly regulate such matters as are really within its jurisdiction. Further, the requiring of information concerning a business is not regulation of that business." * * * *

It is contended that this construction of the statute enables the Commission not only to regulate the interstate business, but as well the wholly intrastate business of the complaining corporations, and is, therefore, beyond the power of Congress. Such cases are cited and relied upon by complainants as the *Employers' Liability Cases*, 207 U. S. 462, and *Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514. In those cases acts of Congress and orders of executive departments were held void because they undertook to regulate matters wholly intrastate, as distinguished from those matters of an interstate character and within the legislative power of Congress. And what we have already said as to the character of these orders is enough to indicate that in our opinion they are not regulations of intrastate commerce.

So in this case requiring equal treatment of all interstate shippers and the establishment of such rates as gives shippers from Shreveport to Texas points equal opportunity to engage in the trade of that portion of Texas, is not a regulation of transportation wholly within the State of Texas. We have already called attention to the fact that the carriers can prescribe rates from Shreveport to Texas in conformity with the order of the Commission without changing in any wise the rates which the carriers apply on traffic wholly between points within the State of Texas. It well may be that the word "wholly" as used in the Act to regulate commerce contemplates that transportation as is said in *Gibbons vs. Ogden*, 9 Wheat. 1, "which is completely internal, which is carried on between man and man in a state or between different parts of the same state, AND which does not extend to or AFFECT other states." This Court must

have had some such distinction in mind when in the Goodrich Transit case it refers to the proviso as excepting commerce "wholly domestic."

This Court had before it a kindred subject matter in the Car Distribution cases. We desire to analyze in detail the decision of this Court and to mention the points of resemblance from which we think a conclusion favorable to our contentions in this case must inevitably be drawn.

In the Car Distribution cases, *Illinois Central v. Interstate Commerce Commission*, 215 U. S. 452, this Court affirmed an order of the Interstate Commerce Commission, directing the counting of company fuel cars in making daily distribution of coal cars in times of car shortage to bituminous coal mines along the line of the Illinois Central Railroad. The Commission had required the Illinois Central to count in its system of distribution three classes of cars, viz: private cars, fuel cars of foreign railroads and company fuel cars. The Commission had found that failure or refusal to take into account these three classes of cars "in the distribution of coal cars for, or affecting, interstate shipments of coal among the various coal operators along their lines" (Transcript of Record, No. 502, October Term, 1908, No. 233, October Term, 1909, page 61) was an unjust discrimination. The Commission required the carriers to "maintain and enforce a practice of regulation taking into consideration system cars, foreign railway fuel cars, leased or so-called private cars, and cars used for their own several fuel supplies in determining the distribution of coal cars among the various coal operators along their lines for, or as affecting, interstate shipments of coal."

The case was heard before Grosscup, Baker and Kohl-saat, circuit judges, who sustained the order of the Commission on the first two classes of cars, viz: private cars and fuel cars of foreign railroads. It was urged by the railroads against the validity of the order that as to private cars (Transcript 233 October Term, 1909, page 62, quoting from the opinion of the Circuit Court only) :

It appears that certain shippers who own cars do no business outside of Illinois. In their behalf it is suggested that, even if private cars used in interstate commerce must be counted, the complainant carriers can not be required to take into consideration the cars of shippers who do only an intrastate business.

Where Federal authority exists it is paramount. It exists here by virtue of the fact that complainants are interstate carriers. No practices on their lines can be permitted which favor local commerce at the expense of interstate and foreign commerce. In case of a conflict with a rule for the protection of interstate commerce, which has been duly made by the Interstate Commerce Commission, local constitutions, statutes, orders of railway commissions, and regulations of the carriers, all must give way.

That Court, however, found that in the case of cars loaded with company fuel "commerce in these instances ends at the tipples" and that from that time on there was no consignor, no consignee, no shipper, no common carrier, no freight, and no vehicle transporting a commodity in commerce.

The carriers did not appeal from that portion of the decree sustaining the Commission's order as to private cars or foreign fuel cars. The Commission appealed from that part of the decree which enjoined the Commission's order

so far as it applied to company fuel cars. This Court in its opinion by the present Chief Justice, said:

As the Interstate Commerce Commission alone has appealed, it is patent that those portions of the order of the Commission which concern foreign railway fuel cars and private cars, and which the court below refused to enjoin, are not open to inquiry. The suggestion at once presents itself whether, if these subjects are not open, they do not necessarily carry with them the question of company fuel cars, on the ground that the three classes rest upon one and the same consideration, and that to divorce them would bring about conditions of preference and discrimination which the act to regulate commerce expressly prohibits. In view, however, of the great importance of the questions directly arising for decision, and the fact that the court below has treated the company fuel cars as distinct, we shall not be sedulous to pursue the suggestion, and come at once to the propositions of power previously stated.

First. *That the act to regulate commerce has not delegated to the Commission authority to regulate the distribution of company fuel cars in times of car shortage as a means of prohibiting unjust preferences or undue discrimination.*

When coal is received from the tipple of a coal mine into coal cars by a railway company and the coal is intended for its own use and is transported by it, it is said there is no consignor, no consignee, and no freight to be paid, and therefore, although there may be transportation, there is no shipment, and hence no commerce. In changed form, these propositions but embody the reasoning which led the court below to its conclusion that, under the circumstances, commerce ended at the tipple of the mine. The deduction from the proposition is, as the movement of coal under the

conditions stated is not commerce, it is therefore not within the authority delegated to the Commission by the act of Congress, as all such acts have relation to the regulation of commerce, and do not, therefore, embrace that which is not commerce. It is to be observed, in passing, that if the proposition be well founded, it not only challenges the authority of the Commission, but extends much further, and in effect denies the power of Congress to confer authority upon the Commission over the subject. In all its aspects, the proposition calls in question the construction given to the law by the Commission in every case where the subject has been before it, and also assails the correctness of numerous decisions in the lower Federal court, to which we have previously referred, where the subject, in various forms, was considered. It goes further than this, since it, in effect, seeks to avoid the fair inferences arising from the regulations adopted by the railroad company. Those regulations, in providing for the obligation of the railroad company to supply cars, and recognizing the duty of equality of treatment, found it necessary, by express provision, to provide that private cars, foreign railway cars, and company fuel cars should not be counted against the mine on the day when furnished, thus implying that, under the general rule of equality, if not restricted, it was considered the duty would exist to consider such cars. The contention, moreover, conflicts with the rule which, as we have seen, obtains in other and great systems of railroad, by which, for the purpose of avoiding equality and preference, foreign railway fuel cars, private cars, and company fuel cars are made one of the factors upon which a mine is rated in order to fix the basis upon which its distributive share of cars is to be allotted in case of car shortage. And from this

it must follow, if the proposition contended for be maintained, that it would not only relieve the railroad company, whose rights are here involved, from the obligation of taking into account its fuel cars in the making of the distribution, but from the duty even to consider them for the purpose of capacity rating. As a result it would lead to the overthrow of the system of rating prevailing on other railroads, by which, as we have said, such cars are taken into account—a consequence which is well illustrated by the case of *Logan Coal Co. v. Pennsylvania R. Co.*, 154 Fed. 497.

Under these conditions, it is clear that doubt, if it exist, must be resolved against the soundness of the contentions relied on. But that rule of construction need not be invoked, as, we think, when the erroneous assumption upon which the proposition must rest is considered, its unsoundness is readily demonstrable. That assumption is this: that commerce, in the constitutional sense, only embraces shipment in a technical sense, and does not, therefore, extend to carriers engaged in interstate commerce, certainly in so far as so engaged, and the instrumentalities by which such commerce is carried on,—a doctrine the unsoundness of which has been apparent ever since the decision in *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23, and which has not since been open to question. It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation, which extends, in time of car shortage, to compelling a just and equal distribution, and the prevention of an unjust and discriminatory one. * * * * *

The insistence that the necessary effect of an

order compelling the counting of company fuel cars in fixing, in case of shortage, the share of cars a mine from which coal has been purchased will be entitled to, will be to bring about a discrimination against the mine from which the company buys coal, and a preference in favor of other mines, but inveighs against the expediency of the order. And this is true also of a statement in another form of the same proposition; that is, that if, when coal is bought from a mine by a railroad, the road is compelled to count the cars in which the coal is moved in case of car shortage, a preference will result in favor of the mine selling coal and making delivery thereof at the tipple of the mine to a person who is able to consume it without the necessity of transporting it by rail. At best, these arguments but suggest the complexity of the subject, and the difficulty involved in making any order which may not be amenable to the criticism that it leads to or may beget some inequality. Indeed, the arguments just stated, and others of a like character which we do not deem it essential to specially refer to, but assails the wisdom of Congress in conferring upon the Commission the power which has been lodged in that body to consider complaints as to violations of the statute, and to correct them if found to exist, or attack as crude or inexpedient the action of the Commission in performance of the administrative functions vested in it, and upon such assumption invoke the exercise of unwarranted judicial power to correct the assumed evils. It follows from what we have said that the court below erred in enjoining the order of the Commission, in so far as it related to company fuel cars, and its decree is therefore reversed, and the case remanded for further proceedings in conformity with this opinion.

Interstate Commerce Com'n. v. Illinois Central R. Co., 215 U. S. 452, 54 Law Ed. 280, 288, 289, 291.

A similar ruling as to the matter being within the jurisdiction of the Commission was made by this Court in the case of *Baltimore & Ohio Railroad Company et al, v. United States, ex rel Pitcairn Coal Company*, 215 U. S. 481:

To a consideration of this question it is essential to at once summarily and accurately fix the subject-matter of the alleged grievances and the precise character of the relief required in order to remedy the evils complained of upon the assumption of their existence. As to the first, it is patent that the grievances involve acts of the Baltimore & Ohio Railroad, regulations adopted by that company, and alleged dealings by the other corporations, all of which, it is asserted, concern interstate commerce, and all of which, it is alleged, are in direct violation of the duty imposed upon the railroad company by the provisions of the act to regulate commerce. As to the second, in view of the nature and character of the acts assailed, of the prayer for relief which we have previously excerpted, and of the relief which the court below directed to be awarded, it is equally clear that a prohibition, by way of mandamus, against the act, is sought, and an order, by way of mandamus, was invoked and was allowed, which must operate, by judicial decree, upon all the numerous parties and various interests as a rule or regulation as to the matters complained of for the conduct of interstate commerce in the future. When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission, and not subject to

be judicially enforced; at least, until that body, clothed by the statute with authority on the subject, had been afforded, by a complaint made to it, the opportunity to exert its administrative functions.

These cases, it is true, deal with the instrumentalities, the cars of carriers subject to the act, but the order of the Commission required the carriers to remove unjust discriminations and undue preferences. Those preferences arose out of the allotment of cars for both state and interstate traffic. The order of the Commission sustained by this court has removed all those undue preferences and unjust discriminations; today the carriers apply the same rules for the distribution of cars in Illinois for shipments to Chicago that they do for shipments to St. Paul and Kansas City. So in the present case the Commission has required the removal of unjust discriminations and undue preferences in the transportation rates, as between the shipper from Houston to Lufkin, a typical consuming point in Eastern Texas, and the shipper from Shreveport to Lufkin. Compliance with the order by the carriers will put upon an equality all shippers to eastern Texas points, whether they be citizens of Louisiana or citizens of Texas. The order of the Commission is not directed against the Texas state rates and does not of necessity "apply" to such rates. The action of the Texas State Commission, obedience to which by the appellants herein brought about the unjust discrimination condemned by the Commission, *directly* affects traffic between Shreveport and these Texas points of consumption. If the Commission of Texas had made rates as the State of Minnesota made its rates, solely with the idea of prescrib-

ing what was just and reasonable for the service performed, there would probably have been no cause for complaint by the Railroad Commission of Louisiana. In the Minnesota rate case the Interstate Commerce Commission had not passed judgment upon the interstate rates.

Any order other than that entered in this case by the Interstate Commerce Commission would have been an abdication by that Commission of its administrative authority under the Act to regulate commerce. A holding by this Court that the Commission had the authority to make the order complained of herein will bring about uniformity, will break down a wall built by a State to control or direct the current of interstate commerce and will give citizens of every state equal opportunity to engage in interstate commerce. The commerce clause of the Constitution was designed to secure complete freedom of trade and commerce; the Act to regulate commerce is but Congressional expression of the same purpose. Unjust discriminations and undue preferences have no proper place in commerce among the states. The order of the Commission is lawful; the Commerce Court did not err in dismissing appellants' petition; and the decree should be affirmed.

Respectfully submitted,

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SEP 30 1913

JAMES S. McKENNEY,

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 567.

**HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY
ET AL., APPELLANTS,**

v.

**UNITED STATES, INTERSTATE COMMERCE COMMISSION,
ET AL., APPELLEES.**

No. 568.

**THE TEXAS & PACIFIC RAILWAY COMPANY ET AL.,
APPELLANTS,**

v.

**UNITED STATES, INTERSTATE COMMERCE COMMISSION,
ET AL., APPELLEES.**

APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

P. J. FARRELL,
Solicitor.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

HOUSTON, EAST & WEST TEXAS RAIL- way Company et al., appellants, v. UNITED STATES, INTERSTATE COMMERCE Commission, et al., appellees.	}	No. 567.
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THE TEXAS & PACIFIC RAILWAY COM- pany et al., appellants, v. UNITED STATES, INTERSTATE COMMERCE Commission, et al., appellees.	}	No. 568.
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APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

STATEMENT.

These cases are appeals from final decrees of the Commerce Court dismissing petitions filed in that court by appellants against the United States to obtain decrees annulling and setting aside an order of the Interstate Commerce Commission, dated

March 11, 1912. The body of the order, with certain exceptions noted, reads as follows:

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is ordered, That defendants The Texas & Pacific Railway Co., the Houston, East & West Texas Railway Co., and Houston & Shreveport Railroad Co. be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Co. be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are

found by the commission in its report to be reasonable, to wit: [Table of rates omitted.]

It is further ordered, That defendants The Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co. be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the commission in its report to be reasonable, to wit: [Table of rates omitted.]

It is further ordered, That defendant The Texas & Pacific Railway Co. be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co. be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May,

1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the commission in said report to be reasonable.

And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the State of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants. (Rec., No. 568, pp. ———.)

**SUMMARY OF CIRCUMSTANCES AND CONDITIONS WHICH
PRECEDED THE MAKING OF THE ORDER.**

On or about March 8, 1911, the Railroad Commission of Louisiana, by its members, J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, filed in the office of the commission a complaint against the appellants and certain other carriers, wherein it

alleged, among other things, that class rates maintained, exacted, and collected by the appellants for the transportation of freight articles in a westerly direction to points on their lines of railway in the State of Texas from Shreveport, La., were unjust and unreasonable in and of themselves, and were also unjustly discriminatory in that they were much greater in each instance than the rates contemporaneously maintained, exacted, and collected by appellants for the transportation of like traffic over said lines in an easterly direction to said destination points from the cities of Dallas and Houston, in the State of Texas, and that, by reason of such discrimination, the latter two cities were given undue and unreasonable preference and advantage and Shreveport was subjected to undue and unreasonable prejudice and disadvantage. (Rec., No. 567, p. 2.)

After due hearing and investigation the commission made a report in the premises, wherein it stated its findings and conclusions as below:

We find:

(1) That the present class rates out of Shreveport to points in Texas on the Texas & Pacific Railway included in the following table and to points in Texas on the Houston, East & West Texas Railway are unjust and unreasonable.

(2) That just and reasonable class rates on these lines of railroad should not exceed the following:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>										
Waskom, Tex.....	22.7	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex.....	26.0	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex.....	34.1	22	20	18	16	14	15	13	10	8	7
Marshall, Tex.....	42.0	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex.....	55.2	29	27	25	23	19	20	17	14	12	9
Longview, Tex.....	65.7	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex.....	69.1	34	31	29	27	21	22	19	16	13	10
Camps, Tex.....	72.6	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex.....	78.2	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex.....	88.3	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex.....	94.0	42	39	36	33	25	26	23	20	16	13
Crow, Tex.....	100.5	44	41	38	35	26	27	24	21	16	13
Mineola, Tex.....	111.5	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex.....	124.6	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex.....	135.1	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex.....	142.3	56	52	47	45	32	33	30	26	19	16
Elmo, Tex.....	151.4	58	54	49	47	33	34	31	27	19	16
Terrell, Tex.....	157.9	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex.....	161.9	61	56	51	49	35	36	33	28	20	16
Forney, Tex.....	169.4	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex.....	177.6	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex.....	182.3	66	61	55	53	37	38	35	30	21	16

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Dis- tance.	Class rates in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>										
Joaquin, Tex.....	42.8	25	23	21	19	17	18	15	12	10	8
Teneha, Tex.....	54.3	29	27	25	23	19	20	17	14	12	9
Timpson, Tex.....	63.9	32	29	27	25	20	21	18	15	13	10
Garrison, Tex.....	72.3	35	32	30	28	22	23	20	17	14	11
Appleby, Tex.....	83.3	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex.....	92.4	41	38	35	32	25	26	23	20	16	13
Angelina, Tex.....	104.3	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex.....	112.5	48	45	41	39	28	29	26	23	17	14
Renova, Tex.....	127.6	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex.....	137.7	55	51	46	44	32	33	30	26	19	16
Moscow, Tex.....	143.2	56	52	47	45	32	33	30	26	19	16
Valda, Tex.....	147.0	57	53	48	46	33	34	31	27	19	16
Leggett, Tex.....	151.0	58	54	49	47	33	34	31	27	19	16
Livingston, Tex.....	159.2	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex.....	167.3	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex.....	175.4	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex.....	187.5	67	62	56	54	38	39	36	30	21	16
Midline, Tex.....	194.2	69	64	58	56	39	40	37	31	22	17
New Caney, Tex.....	203.4	71	65	58	56	40	41	37	31	22	17
Pauli, Tex.....	208.8	72	66	59	57	40	41	38	32	22	17
Humble, Tex.....	213.6	73	67	59	57	41	42	38	32	22	17
Houston, Tex.....	230.7	77	70	60	58	43	44	39	33	23	17

(3) That such carriers maintain higher rates from Shreveport to points in Texas than are maintained from cities within Texas to such

points under substantially similar conditions and circumstances.

(4) That thereby an unlawful and undue preference and advantage is given to such Texas cities, and a discrimination that is undue and unlawful is effected against Shreveport.

(5) That an order should be issued directing said carriers to establish and maintain rates no higher than those above found to be reasonable out of Shreveport to the Texas points named under western classification.

(6) That the Texas & Pacific Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Dallas toward Shreveport for an equal distance.

(7) That the Houston & Shreveport Railroad Company and the Houston, East & West Texas Railway Company shall cease and desist from charging higher rates upon any commodity from Shreveport into Texas than are contemporaneously charged for the carriage of such commodity from Houston toward Shreveport for an equal distance.

It will be the duty of the carriers under such order to duly and justly equalize the terms and conditions upon which they will extend transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas. But in effecting such equalization the class scale of rates prescribed above shall not be exceeded.

As to the matter of the concentration of Texas cotton at Shreveport specifically dealt with in the complaint we find the carriers pursuing a policy with respect to Texas cotton within Texas which they do not apply to Shreveport. This discrimination is likewise disapproved. Whatever is the practice pursued respecting the concentration of cotton within Texas the carrier shall be ordered to apply at Shreveport, provided the practice adopted shall be one justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of the carriers. (Rec., No. 567, pp. 34-36.)

And thereupon the commission made and entered said order and caused it to be served upon the carriers named therein.

Thereafter the appellants, Houston, East & West Texas Railway Company, Houston & Shreveport Railroad Company, and Texas & Pacific Railway Company, filed petitions in the Commerce Court wherein they contended that the order was invalid as to all its requirements and asked that it be annulled and set aside. Later, the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company, and the St. Louis Southwestern Railway Company of Texas intervened on behalf of the petitioners, and the Interstate Commerce Commission and the Railroad Commission of Louisiana intervened on behalf of the respondent.

When the case came on for final hearing the appellants abandoned their contentions, except in

so far as they relate to paragraphs 5 and 6 of the order, and, in other respects, they afterwards complied fully with the terms of the order. The paragraphs referred to require the carriers named therein to remove the discrimination resulting from the maintenance and exaction of rates for the transportation of traffic in a westerly direction over their lines of railway to destination points in Texas from Shreveport which are relatively greater than the rates contemporaneously maintained and exacted by them for the transportation of like traffic in an easterly direction over said lines to the same destination points from Dallas and Houston. The appellants say the commission may not require them to remove this discrimination because it does not result from action voluntarily taken by them, but is caused instead by unreasonably low and noncompensatory rates prescribed by the Railroad Commission of the State of Texas under authority conferred upon it by the legislature of that State, which the appellants were obliged to adopt and are now compelled to maintain in force. In this connection the commission, in its report, said:

This proceeding places in issue the right of interstate carriers to discriminate in favor of State traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first-class traffic to the

eastward from Dallas, a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. * * *

The Railroad Commission of Louisiana has brought this proceeding, under direction of the legislature of that State, for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) to end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas State traffic and against similar traffic between Louisiana and Texas.

The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the Railroad Commission of Texas to effect the discrimination here involved.

POLICY OF THE TEXAS COMMISSION.

The Railroad Commission of Texas, while not made a party to this proceeding, was notified of the hearing, but was not represented thereat. The position which it takes, however, appears from the following letter, which was incorporated in the record:

"AUSTIN, TEX., *September 12, 1911.*

"MR. H. B. PITTS,

"*Secretary Progressive League,*

"*Marshall, Tex.*

"DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th instant, with which you inclose letter from Mr. A. T. Kahn,

of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from the commission in order that you may properly understand the matter involved, and in reply you are advised:

"For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

"Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their local rates out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of the commission's action and to place the Texas jobber at the same disadvantage under which he previously labored.

"Yours, respectfully,

"ALLISON MAYFIELD,
Chairman."

THE PROBLEM RAISED.

The petition of the complainants is that this commission "establish the same basis of rates of transportation between Shreveport and east Texas points as are accorded by defendants to Texas competitors of Shreveport interests in the same line of business for the same distances."

With this petition we can not comply unless such power has been granted us under the first, third, and fifteenth sections of the act to regulate commerce. We have no power to require an interstate carrier to put into effect from an interstate point a State-made schedule of rates; our power is limited to condemning unreasonable rates and fixing maximum rates that are in our judgment just and reasonable. Therefore we may not say that because a carrier has in effect State-made rates upon State traffic such rates shall be established by it upon interstate business, for, to put the matter bluntly, the rates fixed by a State commission are not prescribed as a standard by the act of Congress governing interstate rates of transportation. The Texas rates as such, therefore, we may not prescribe. If, however, they stand the test of reasonableness they may be adopted.

Passing, then, to the question of discrimination, has this commission the power to say that whatever rates an interstate carrier makes between points in Texas shall not be exceeded for the same distance under like conditions between Shreveport and Texas points? In

other words, may a carrier engaged in interstate commerce discriminate against a city beyond the border of a State by imposing upon the city's traffic rates which deny its shippers access upon equal terms to the communities of an adjoining State?

This is an appeal to the powers lodged in this commission under the third section of the act—that provision which is aimed at the destruction of undue preference and advantage. We thus meet directly the most delicate problem arising under our dual form of government. Congress asserts its exclusive dominion over interstate commerce; the State asserts its absolute control over State commerce. The State for its own purposes establishes rates designed to protect its own communities and promote the development of its own industries. These rates are adopted by the interstate carriers upon State traffic but are not adopted upon interstate traffic. Thus arises a discrimination in favor of communities within the State, and interstate commerce suffers a corresponding disadvantage. May this commission end such discrimination by saying to the interstate carrier: "You may not distinguish between State and interstate traffic transported under similar conditions. If the rates prescribed for you by State authority are not compensatory upon this specific traffic as to which discrimination is found the burden rests upon you, irrespective of your obligation to the State, to so adjust your rates that justice will be done between communities regardless of the invisible State line which divides

them." To which we are compelled to answer, that the effective exercise of its power regarding interstate commerce makes necessary the assertion of the supreme authority of the National Government, and that the Congress has appropriately exercised this power in the provisions of the act to regulate commerce, touching discrimination. (Rec., No. 567, pp. 21-22 and 27-28.)

The Texas commission prescribed a schedule of class rates, called "standard" rates, for the transportation of freight articles generally between points in the State of Texas which are the same, relatively, as the class rates afterwards established by the appellants for similar transportation from Shreveport to certain destination points in Texas, in partial compliance with the commission's said order of March 11, 1912; but after standard rates had been thus established the Texas commission, for the purpose, as above shown, of offsetting differences in interstate rates to Shreveport as compared with Dallas and Houston, from northern and eastern points, prescribed another schedule of rates, known as "commodity" rates, which are much less in each instance than said standard rates, for the transportation of like articles from the latter two cities to said destination points; and the action of the appellants in exacting the higher class rates from Shreveport, while contemporaneously applying the lower commodity rates from Dallas and Houston, is the discrimination which was found

by the commission to be undue. Upon this finding of undue discrimination the commission based paragraphs 5 and 6 of its said order of March 11; and the question of whether those portions of the order are valid is the only matter now before the court for determination.

The appellants say that, in effect, the portions of the order referred to are a regulation of intrastate rates of transportation, and they contend, first, that such regulation is beyond the power of the Congress, and, second, that even if the fact be otherwise, such power has not been conferred upon the Interstate Commerce Commission.

POINTS.

I.

THE POWER OF THE CONGRESS TO REGULATE INTER-STATE COMMERCE DOES NOT DEPEND UPON THE EFFECT SUCH REGULATION MAY HAVE UPON INTRASTATE COMMERCE.

Upon this point it does not seem necessary to make an extended argument. In *Gibbons v. Ogden* (9 Wheat., 1), this court, speaking through Mr. Chief Justice Marshall, concerning the power of the Congress to regulate commerce among the several States, said:

This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. (*Id.*, 196.)

And from the doctrine thus established there has since been no departure. (*The Second Employers' Liability Cases*, 223 U. S., 1, 46-47; *The Minnesota Rate Cases*, 230 U. S., p. 352.)

It is true that this power is not unlimited. The Congress may not so legislate as to deprive a person of property without due process of law or take private property for public use without just compensation. But a law regulating interstate commerce, enacted by the Congress, can not be defeated by showing that it will necessarily interfere with a regulation of intrastate commerce, prescribed by a tribunal acting under authority conferred by the legislature of a State. In this connection the Commerce Court, in its opinion, said:

The right of a State to control the movement of its internal commerce and the instrumentalities employed in such movement is not unlimited, as the Supreme Court has repeatedly declared. In the first case which involved the scope and meaning of the commerce clause, *Gibbons v. Ogden* (9 Wheat., 1), the line of demarkation between State and Federal power was defined by Chief Justice Marshall in the following language:

"It is not intended to say that these words (commerce among the States) comprehend that commerce which is completely internal, which is carried on between man and man in a State or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary. Comprehensive

as the word 'among' is, it may very properly be restricted to *that commerce which concerns more States than one.* * * * The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the Nation, *and to those internal concerns which affect the States generally*, but not to those which are completely within a particular State, *which do not affect other States*, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government." (Italics ours.)

This definition has been uniformly accepted and the language itself quoted with approval in a number of cases. *The Daniel Ball* (10 Wall., 557, 565); *The Lottery Cases* (188 U. S., 321, 346); *The First Employers' Liability Cases* (207 U. S., 463, 493). And quite recently, in *The Second Employers' Liability Cases* (223 U. S., 1, 54), Mr. Justice Van Devanter, after quoting to the same effect from *McCulloch v. Maryland* (4 Wheat., 426), remarks that "particularly apposite is the repetition of that principle in *Smith v. Alabama*" (124 U. S., 465, 473), where it is stated as follows:

"The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts

with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."

In the light of these decisions and many others of similar import it seems clear to us that Congress is invested with ample power to prevent or remove such a discrimination as is here considered. (205 Fed., 382-383.)

II.

IN FINDING THE DISCRIMINATION TO BE UNDUE AND REQUIRING ITS REMOVAL THE COMMISSION DID NOT EXCEED THE POWERS CONFERRED UPON IT BY THE ACT TO REGULATE COMMERCE.

Pertinent portions of the act are as follows:

SECTION 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * *, from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, * * *.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable

prejudice or disadvantage in any respect whatsoever.

SEC. 15. That whenever, after full hearing upon a complaint made as provided in section 13 of this act, * * *, the commission shall be of the opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of passengers or property * * *, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

It is admitted that the carriers named in the order are covered by the language of section 1; that as a matter of fact, the discrimination condemned by the commission exists, and can not be justified by anything inherent in the transportation services performed by the carriers, and that the full hearing provided for in section 15 was accorded by the commission; but it is insisted that, because of a proviso contained in section 1, the discrimination is not covered by the provisions of sections 3 and 15. The language of the proviso, so far as material here, is as follows:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, * * *.

In other words, it is contended that the effect of the proviso is to modify the comprehensive language of the paragraph of section 3 above quoted and prevent it from applying to a discrimination against interstate commerce, regardless of its character or extent, if it is caused by rates applied to the transportation of intrastate commerce, and thereby render invalid any order made by the commission, under authority conferred upon it by section 15, requiring that such discrimination be removed.

It is apparent that if this contention were held to be sound it would result that a very large portion

of interstate commerce carried on by railroad would be left without governmental regulation of any kind, because of course it can not be successfully contended that interstate commerce may be regulated either by a tribunal acting under authority conferred by an individual State or by the State itself. However, such a construction of the law can not be upheld.

III.

SECTION 1 OF THE ACT COVERS ALL INTERSTATE AND FOREIGN COMMERCE CARRIED ON BY RAILROAD.

In *Texas & Pacific Railway Company v. Interstate Commerce Commission* (162 U. S., 197) this court, after quoting the language of section 1, said:

It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (excepting commerce wholly within a State) as well that between the States and Territories as that going to or coming from foreign countries. (Id., 212.)

IV.

THE PROVISIO IN SECTION 1 OF THE ACT DOES NOT CREATE AN EXCEPTION, BUT IS SIMPLY A DISCLAIMER AS TO TRANSPORTATION WHOLLY WITHIN A STATE, WHICH DOES NOT CONCERN OR AFFECT ANY OTHER STATE.

The Congress inserted the proviso in section 1 of the act for the sole purpose of manifesting in unmistakable terms an intention of confining the provisions of the act to interstate and foreign commerce and of

disclaiming an intention to exercise such control over intrastate commerce as might be held to be exclusively within the jurisdiction of the individual States. Upon this point the Commerce Court, in its opinion, said:

The intent and meaning of this proviso has been quite fully discussed by this court in *Denver & R. G. R. Co. v. Interstate Com. Com'n* (195 Fed., 968) and a conclusion therein reached substantially adverse to the contention here considered. In that case we said:

"Section 1 not only subjects to the act, first, certain carriers, but also, second, certain transportation. The proviso relates not to the carriers but to the transportation, and is therefore to be read in connection with the second clause of the section and not with the first.

* * * * *

"Then, out of abundant caution, as it seems, and by way of disclaimer of any authority over a carrier that confined its business to one State and was not engaged in such interstate business as would bring it within the first clause, the proviso was added.

* * * * *

"The proviso, therefore, must be regarded as a disclaimer and not as an exception. It could not, of course, be an exception to the second grant of jurisdiction over certain transportation, and it does not in any way refer to the first grant of jurisdiction over certain car-

riers, either by way of disclaimer or by way of exception.

* * * * *

"This construction gives consistent and appropriate meaning to those provisions of the first section which define the scope and application of the entire enactment. It sustains the act as a comprehensive scheme of regulation designed to include all interstate transportation wholly by railroad, or partly by railroad and partly by water, when both are used under a common arrangement, *and to exempt only that intrastate transportation which is not within the power of Congress to regulate.*"

Adhering to the views then expressed, which are summed up in the last paragraph quoted, we hold that this proviso is a mere disclaimer of any intention on the part of Congress, in enacting the act to regulate commerce, to exceed its constitutional power, and that it was not designed to limit or confine the power which Congress could exercise—and, in our opinion, has exercised—in respect of such matters as are here in dispute. If this construction be correct, it follows that the proviso in no way prevents the application of the third section to the facts of this case, and therefore it was within the authority of the commission to make the order in question (205 Fed., 384.)

To the same effect see, *Int. Com. Com. v. Goodrich Transit Co.* (224 U. S., 194, 207).

And statements made by the commission were as follows:

The language [language of the proviso] was intended as a recognition of the fact that Congress by this act was not assuming to regulate transportation entirely within the borders of a State. It does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a State that would affect unlawfully commerce among the States. The phrase "among the several States," as recently defined by Mr. Justice Van Devanter with nice precision, "marks the distinction for the purpose of governmental regulation between commerce which concerns two or more States and commerce which is confined to a single State and does not affect other States, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the States severally." (*Mondou v. N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, decided Jan. 1, 1912.) It is not merely the commerce which is confined to a single State which is State commerce, but that which "does not affect other States." The State goes untouched as to its railroad policies so long as they do not trench upon the interstate field. Congress does not say that State rates shall be reasonable or that rebates upon State traffic shall be unlawful or that discrimination between localities within the State shall not be allowed. To reach these matters, so far as they do not affect interstate commerce, is the prerogative of the State, which is recognized

and protected by the language of the act quoted.

But, as to the nation, Congress has prohibited carriers of interstate commerce from giving undue preference or advantage to one community over another. To say that this prohibition permits such carriers to exclude a city within the State of Louisiana from doing business upon equal terms with the cities in Texas is to distort the plain meaning of the act and make the regulation of interstate commerce farcically ineffective. To say that interstate carriers may so discriminate because of the orders of a State commission is to admit that a State may limit and prescribe the flow of commerce between the States.

And if one State may exercise its power of fixing rates so as to prefer its own communities, all States may do so. There would thus arise a commercial condition more absurd and unbearable than that which obtained prior to the Constitution when each State sought to devise methods by which its commerce could be localized. How utterly incongruous the result if the interstate carriers of Ohio should be allowed to make rates within that State which would so confine the commerce of its communities as to exclude on equal terms that of Buffalo or of Pittsburgh; and what national system of regulation could there be if interstate commerce could be discriminated against after such fashion? Manifestly Congress has dealt with the railroads of the country as servants of a national commerce and has accordingly laid down the rule of fair play to which they must conform.

Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that State commerce was that wholly within a State "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886, out of which grew the act to regulate commerce. (Rec., No. 567, pp. 31, 32.)

V.

**THE DISCRIMINATION WAS CAUSED BY ACTION OF
THE CARRIERS WHICH WAS VOLUNTARY, WITHIN
THE LEGAL MEANING OF THAT TERM.**

The appellants say they can not be held responsible for the discrimination, because it resulted from the application of intrastate rates prescribed by a State authority, which they were obliged to adopt and are now compelled to maintain in force. In this connection the commission said:

An interstate carrier must respect the Federal law, and if it is also subjected to State law it must respect that in so far as it can without doing violence to its obligations under the national authority. Before us are carriers which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a State commission, as against which they were helpless. They appealed to no court for relief, nor to this commission. * * * While the Texas commission has evidenced a policy of home protection for its own State's cities,

there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of the State authorities. The interstate carrier which adopts a policy, even under State direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of its responsibilities to the Federal law which guards commerce "among the States" against discrimination.

It is suggested that the exercise of such power to end discrimination between rates within a State and rates to interstate points must surely lead to a conflict in which the jurisdiction of one sovereignty or the other must give way. To this suggestion the one and sufficient answer is that when conditions arise which in the fulfillment of its obligation and the due exercise of its granted power to regulate commerce among the States, make such course necessary the National Government must assume its constitutional right to lead. (Rec., No. 567, pp. 33-34.)

At the time they were required to and did apply the lower commodity rates to the transportation of traffic from Dallas and Houston to the common destination points in Texas here involved the appellants knew that they were applying the higher class rates to the transportation of like traffic to the same destination points from Shreveport; that there was nothing inherent in the transportation services performed

by them which would justify a charge for transportation over a certain distance into Texas from Shreveport which was greater than the charge contemporaneously applied for transportation over a like distance within Texas from Dallas or Houston; that by section 3 of the act to regulate commerce they were prohibited from giving undue preference and advantage to Dallas and Houston and subjecting Shreveport to undue prejudice and disadvantage, and that where a conflict arises between Federal and State authority the latter must give way because the former is supreme. But notwithstanding these matters, they applied the commodity rates, and thus created the discrimination, without making any attempt, other than a useless protest, to have the order of the Texas commission set aside.

Under such circumstances we think it can not be successfully contended that the action of the appellants in creating the discrimination was involuntary. On the contrary, we submit that such action was entirely voluntary, within the legal meaning of that term.

In this connection the appellants appear to rely particularly upon the decision of this court in the case of *East Tennessee, Virginia & Georgia Railway Company v. Interstate Commerce Commission* (181 U. S., 1), where the court, speaking through the present Chief Justice, said:

The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or

undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers. (Id., 18.)

In that case the complaint before the commission was that certain carriers were violating the provisions of the long-and-short-haul clause of the fourth section of the act to regulate commerce by exacting rates for the transportation of traffic over their lines of railway from the Atlantic seaboard to Chattanooga, the shorter distance point, which were greater, in each instance, than the rates contemporaneously applied by them to the transportation of like traffic from the seaboard through Chattanooga to Nashville, the longer distance point. The commission found that in making the lower rates to Nashville the defendant carriers were simply meeting the competition of other carriers subject to the act, over which they had no control, and that if they should abandon the Nashville traffic no change would thereby result in the relation of rates as between Nashville on the one hand and Chattanooga on the other. (Id., 19.) It held, however, that the discrimination could not lawfully be made, except after application to, and with the consent of, the commission. (Id., 7-8.) And this court held such a construction of the act to be erroneous.

It goes without saying that if the appellants should cease and desist from the discrimination here involved

a material change would be thereby made in the relation of rates as between Shreveport on the one hand and Dallas and Houston on the other. And to say that the appellants have no control over the discrimination would be equivalent to saying that a discrimination against interstate commerce prohibited by Federal authority can not be removed because its continuance is required by a State authority. It is therefore apparent that the decision of this court in the *East Tennessee, Virginia & Georgia Case* has no application to the pertinent facts in this case.

But there are other reasons why such application can not be made. In the *East Tennessee, Virginia & Georgia Case* this court did not determine whether the discrimination involved was undue, but, after correcting the error of law made by the commission, as aforesaid, made the following provision for further proceedings:

The decree of the Circuit Court of Appeals should be reversed, with costs, and the case be remanded to the Circuit Court, with instructions to set aside its decree adjudging that the order of the commission be enforced and to dismiss the application made for that purpose, with costs, the whole to be without prejudice to the right of the commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the matter in controversy according to law.

And it is so ordered. (Id., 29.)

Also, as stated in its opinion by the Commerce Court:

Moreover, the administrative authority of the commission has been materially increased by the amendments of 1906 and 1910, as the Supreme Court observed in the recent *Procter & Gamble Case* (225 U. S., 282, 297), and it may be open to doubt whether decisions under the former fourth section would be followed in cases arising under the amended statute. (205 Fed., 385.)

VI.

THE CONGRESS MAY REGULATE INTERSTATE COMMERCE, EVEN THOUGH SUCH REGULATION MAY MATERIALLY AFFECT INTRASTATE COMMERCE, BUT THE POWER OF A STATE OVER INTRASTATE COMMERCE IS LESS COMPREHENSIVE.

We have seen that the power of the Congress to regulate interstate commerce does not depend upon the effect such regulation may have upon intrastate commerce, but we have also seen that the power of a State to regulate intrastate commerce is confined to cases where such regulation will not materially discriminate against or otherwise embarrass interstate commerce. In this connection see, *supra*, *Gibbons v. Ogden* (9 Wheat., 1, 194-196), *The Second Employers' Liability Cases* (223 U. S., 1, 46-47, 54), *The Lottery Cases* (188 U. S., 321, 346), and *Smith v. Alabama* (124 U. S., 465, 473). And see, also, to the same effect, *The Gloucester Ferry Case* (114 U. S. 196, 203-204); *The Pullman Company Case* (216 U. S., 56, 65); *Oklahoma v. Kansas Natural Gas Company* (221 U. S., 229, 261); *Southern Railway Company v.*

United States (222 U. S., 20, 26-27); *Brown v. Houston* (114 U. S., 622, 633); *The Eubank Case* (184 U. S., 27, 36); *The Illinois Central Case* (215 U. S., 452, 474); *Penn. R. Co., v. Int. Com. Com'n*, 193 Fed., 81, 84); *Shepard v. Northern Pac. Ry. Co.* (184 Fed., 765, 795).

In the Shepard case the court, speaking through Sanborn, circuit judge, said:

By the same mark, because it is a regulation of interstate commerce, the Nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the Nation by the Congress and its courts may affect and regulate intrastate commerce. (Id., 795.)

VII.

THE VIEW THAT A DISCRIMINATION AGAINST INTERSTATE COMMERCE MAY NOT BE REMOVED BY FEDERAL AUTHORITY BECAUSE IT RESULTS FROM INTRASTATE RATES PRESCRIBED BY A STATE AUTHORITY AND APPLIED TO THE TRANSPORTATION OF INTRASTATE TRAFFIC IS BASED UPON AN ERRONEOUS THEORY.

In *The Second Employers' Liability Cases*, *supra*, it was contended that the employers' liability act was unconstitutional because it made an interstate carrier liable for an injury inflicted upon an employee engaged in interstate commerce by an employee engaged in intrastate commerce. And in reply to this

contention the court, speaking through Mr. Justice Van Devanter, said:

But this is a mistaken theory, in that it treats the source of the injury, rather than its effect upon interstate commerce, as the criterion of congressional power. * * * That power is plenary, and competently may be exerted to secure the safety of interstate transportation and of those who are employed therein, no matter what the source of the dangers which threaten it. The present act * * * deals only with the liability of a carrier engaged in interstate commerce for injuries sustained by its employees while engaged in such commerce. And this being so, it is not a valid objection that the act embraces instances where the causal negligence is that of an employee engaged in intrastate commerce; for such negligence, when operating injuriously upon an employee engaged in interstate commerce, has the same effect upon that commerce as if the negligent employee were also engaged therein. (Id., 51-52.)

VIII.

THE ORDER OF THE TEXAS COMMISSION IS AT LEAST VOIDABLE, SINCE IT WAS NOT MADE FOR THE PURPOSE OF PRESCRIBING REASONABLE RATES FOR THE TRANSPORTATION OF INTRASTATE COMMERCE, BUT WAS MADE INSTEAD FOR THE PURPOSE OF DISCRIMINATING AGAINST INTERSTATE COMMERCE IN FAVOR OF INTRASTATE COMMERCE.

The cases above referred to fully establish that an order of a State commission which discriminates against interstate commerce, although made under

State authority and for the purpose of regulating intrastate commerce, will be held to be void to the extent of such discrimination. In this case, however, we have seen that the order of the Texas commission was not made for the purpose of prescribing reasonable rates for the transportation of intrastate traffic from Dallas and Houston to the common destination points in Texas, but was made instead for the sole purpose of discriminating against and embarrassing interstate traffic contemporaneously transported to said destination points from Shreveport. And under these circumstances it would be strange, indeed, if the order of the Federal commission, acting under authority conferred by the Congress, requiring that the discrimination be removed, could not be enforced because its enforcement would interfere with the order of the Texas commission. In this connection the Commerce Court, in its opinion, said:

In the report upon which that order [order of the commission] is based the commission has found, upon convincing proofs therein recited, that the local rates here involved were imposed by the Texas commission for the purpose of favoring the industries and communities of that State. Indeed, the evidence is said "to demonstrate that Texas has a policy of her own with respect to the protection of home industry, which has been made effective by consistent and vigorous action on the part of her commission." And in this policy, as is further found, the petitioner and other carriers in like situation have apparently ac-

quiesced. This plainly means, nor is it seriously disputed, that these Texas rates were prescribed not with reference to their intrinsic reasonableness, or on the basis of just compensation for the services rendered, but with the undisguised intention of giving preference and advantage to the dealers of the State as against their competitors in Louisiana and other States. As Commissioner Lane puts it, "the Texas commission is acting *in loco parentis* to the jobbing interests of Texas." It also means, as the record indicates, that the rates so established have been accepted by petitioner without more, at most, than a perfunctory protest.

In view of these uncontradicted facts we are constrained to reject the plea of compulsion, not merely or mainly because petitioner has assented to the protective policy of the Texas commission, but because that policy directly affects other States and the flow of commerce from those States, and thereby encroaches upon the field in which Federal authority is exclusive and supreme. To hold otherwise in this case is virtually to admit that the purpose of the Federal act may be thwarted and its operation made ineffective by the laws and administrative effort of the State of Texas. It is evident, as already stated, that these Texas rates were designed and have the necessary result of securing unjust and arbitrary advantage to the shippers for whom they were provided by restricting the movement of commodities from other States and measurably excluding outside dealers from

competing for trade in Texas territory. The effect of this action by the Texas commission is not merely incidental and unimportant, but direct, substantial, and to an extent prohibitive. In our judgment it is a positive interference with interstate commerce, which Congress alone has power to regulate, and constitutes a violation of the law which Congress, in the exercise of its power, has duly enacted. The pervading purpose of that law was to prevent carriers subject to its provisions from indulging in unfair and burdensome discriminations against persons and localities engaged in interstate commerce. But if such a patent discrimination as this case discloses can not be reached because it is brought about by a State commission, the law fails in a most important respect to accomplish its wholesome purpose. Moreover, if one State commission may create and perpetuate such a discrimination, other State commissions may take similar action for similar reasons, with results which would greatly impair and, indeed, largely defeat the effectiveness of Federal regulation. To say that conditions thus arising do not offend the Federal law and can not be corrected by the commission appointed to administer that law is to say in effect that State authority is superior to Federal authority when they come in conflict, whereas the reverse proposition has been repeatedly and invariably affirmed by the Supreme Court of the United States. (205 Fed., 386-387.)

If the Texas commission believed that interstate rates from northern and eastern points of origin to Shreveport as compared with interstate rates from the same points of origin to Dallas and Houston were unduly discriminatory or otherwise in violation of the act to regulate commerce it should have applied to the Federal commission for relief; but, as above shown (Rec., No. 567, p. 22), while it said that such interstate rates gave Shreveport an advantage over Texas jobbing points, it did not say the advantage was undue. Nevertheless, for the purpose of offsetting such advantage, it prescribed the aforesaid commodity rates from Dallas and Houston to said common destination points in Texas, and its action in doing so, we submit, is, to say the least, voidable.

IX.

A COMMISSION, ACTING UNDER AUTHORITY CONFERRED BY THE LEGISLATURE OF A STATE, MAY NOT OPERATE UPON INTRASTATE COMMERCE IN SUCH A MANNER AS, IN EFFECT, WILL AMOUNT TO THE LEVYING OF A DISCRIMINATORY TAX OR IMPOST UPON INTERSTATE COMMERCE, AND THUS PREVENT ITS FREE MOVEMENT FROM ONE STATE TO ANOTHER.

Upon this point, the present chairman of the commission, in his concurring opinion, said:

Under the Constitution a State may not levy any tax or impost upon commerce from another State. A transportation rate that has been prescribed by, or that is subject to regulation by, a body created by law for that purpose is in essence a tax or impost upon

traffic. Here we have one State demanding that the tax upon its traffic shall not be assessed in such manner as to unjustly discriminate against its citizens by or as a result of action of another State, and an adjoining State insisting upon levying the taxes upon commerce in such manner and measure as to give a monopoly of the traffic here considered to the dealers and commercial centers of that State. It may be suggested that this action is not interference with, and does not impede the free flow of, commerce between the States; that it is simply inviting it to move through one channel or gateway instead of another. These rates, however, do not apply to through movement of the traffic from the points at which it is produced or manufactured to final points of consumption, but apply to the redistribution of such traffic after it has been laid down at distributing centers. A State may not obstruct a navigable waterway without the consent of the Federal Government, and it is no answer to say that it has opened another stream or channel in lieu of the one so obstructed. (Rec., No. 567, pp. 39-40.)

X.

THE COMMISSION COULD NOT HAVE REMOVED THE DISCRIMINATION BY PRESCRIBING REASONABLE RATES FOR THE TRANSPORTATION FROM SHREVEPORT TO SAID COMMON DESTINATION POINTS IN TEXAS.

It is admitted that, without reference to its effect upon intrastate traffic, the commission may, under authority conferred upon it by section 1 of the act

to regulate commerce, make an order prescribing reasonable rates for the transportation of interstate traffic, and it has been suggested that, acting under such authority, the commission might have removed said discrimination, and thus have avoided the conflict between Federal and State authority here involved.

The commission did prescribe reasonable rates for the transportation from Shreveport to said common destination points in Texas, but it will be seen that those rates were, in each instance, much greater than the intrastate rates which had previously been prescribed by the Texas commission for like transportation to said destination points from Dallas and Houston. It is therefore apparent that the suggestion referred to is without merit.

However, we observe no difference in principle between prescribing reasonable rates for the transportation of interstate commerce, on the one hand, and requiring that an undue discrimination against such commerce be removed, on the other hand; and if, without reference to the effect of its action upon intrastate commerce, the commission may prescribe such reasonable rates, we think it necessarily follows that the commission may also, without reference to the effect of its action upon intrastate commerce, require that the discrimination referred to be removed.

XI.

FORMER DECISIONS OF THE COMMISSION IN CONFLICT WITH THE RULING HERE UNDER CONSIDERATION WERE PROMPTED BY A DESIRE ON THE PART OF THE COMMISSION TO AVOID CONFLICTS BETWEEN FEDERAL AND STATE AUTHORITY.

It has been pointed out that in former cases covering matters similar to those involved here the commission recognized the force of arguments which were the same in substance as the contentions of the appellants in this case, by confining itself to the authority conferred upon it by section 1 of the act and refraining from exercising the authority conferred upon it by section 3 of the act, but, as explained by Commissioner Prouty in his concurring opinion (Rec., No. 567, pp. 36-39), this acquiescence was prompted by a desire on the part of the commission to avoid conflicts between Federal authority on the one hand and State authority on the other.

However, we are unable to see wherein the circumstance referred to is material. Showing that the commission refrained from exercising authority possessed by it in one case would not even tend to show that it could not lawfully exercise that authority to its fullest extent in another case. It is both the right and the duty of the commission, whenever in its judgment facts and circumstances within its jurisdiction so require, to exert all the power it possesses under the act to regulate commerce. The question of whether it possessed the power it used in this

case is important, but whether it has used similar power in the past is a matter of no consequence whatever.

XII.

THE DECISION OF THIS COURT IN THE MINNESOTA RATE CASES IS IN ENTIRE CONSONANCE WITH OUR CONTENTIONS IN THIS CASE.

In the *Minnesota Rate Cases* (230 U. S., 352) this court held that rates for the transportation of intrastate traffic, prescribed by the Legislature of Minnesota, and, by the Railroad and Warehouse Commission of that State under authority conferred by said legislature, had not been shown to be unlawful, and were therefore binding upon interstate carriers, notwithstanding that they interfered with rates for the transportation of interstate traffic fixed by the carriers themselves. In this connection the court said that showing such interference was not equivalent to showing either that the rates so prescribed were an undue burden upon interstate commerce, or that they constituted a violation of the prohibitions against undue preference and undue prejudice contained in section 3 of the act to regulate commerce. However, the court reaffirmed principles previously announced by it to the effect: That the power of the Congress to regulate commerce among the several States is plenary, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution; that the individual States may not regulate or unduly discriminate against

such commerce; and that the words "among the several States," contained in the Constitution, distinguish between the commerce which concerns more States than one and the commerce which is confined within one State and does not affect other States. (Id., 398-399.)

Also, after stating that the effect of the proviso included in section 1 of said act is to leave the individual States free to prescribe reasonable rates for the transportation of intrastate traffic, subject to the limitations above mentioned, the court carefully distinguished the case in hand from a case like the one now under consideration, where the fact of undue discrimination has been determined by the Interstate Commerce Commission, the only tribunal having authority to determine such a fact under the provisions of the act to regulate commerce, as will appear from the following excerpt:

It is urged, however, that the words of the proviso are susceptible of a construction which would permit the provisions of section 3 of the act, prohibiting carriers from giving an undue or unreasonable preference or advantage to any locality, to apply to unreasonable discriminations between localities in different States, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively. If it be assumed that the statute should be so construed, and it is not necessary now to decide the point, it would inevitably follow that the controlling principle governing the enforce-

ment of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier in such a case was giving an undue or unreasonable preference or advantage to one locality as against another or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts. The dominating purpose of the statute was to secure conformity to the prescribed standards through the examination and appreciation of the complex facts of transportation by the body created for that purpose; and, as this court has repeatedly held, it would be destructive of the system of regulation defined by the statute if the court without the preliminary action of the commission were to undertake to pass upon the administrative questions which the statute has primarily confided to it. * * * In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the act, and no action of that body is before us for review. (Id., 419-420.)

It will thus be seen that the decision of this court in the *Minnesota Rate Cases* is not in opposition to, but is wholly in harmony with, our contentions in this case.

XIII.

WHEN THE ORDER OF THE COMMISSION WAS SERVED UPON THE APPELLANTS NAMED THEREIN IT BECAME NECESSARY FOR THEM TO ACT IN THE PREMISES, BUT THE NATURE OF THE ACTION TO BE TAKEN WAS A MATTER ADDRESSED SOLELY TO THEIR DISCRETION.

We do not claim that the order of the commission is conclusive, in the sense that it may not be reviewed in court for the purpose of ascertaining whether, in making it, the commission exceeded the powers conferred upon it by the law under which it operates, but we do claim that it was binding upon the appellants named therein unless and until suspended or set aside by a court of competent jurisdiction.

It will be observed that the order, to the extent that its validity is called in question here, might have been complied with by reducing the interstate rates from Shreveport, or by increasing the intrastate rates from Dallas and Houston, or by such reduction in the one case and increase in the other as to bring about the equality required. However, it may fairly be inferred that the commission, having found to be reasonable *per se* the interstate rates from Shreveport which were established in partial compliance with the commission's order, as aforesaid, would regard rates made by reducing said interstate rates as lower than the appellants might justly exact if the discrimination here involved did not exist.

It thus appears that when the order of the commission was served upon them, the appellants were

not thereby compelled to apply to the court for relief, but it is equally evident that they were free to do so, and that they might have requested the court, in proper proceedings instituted for the purpose, to annul and set aside, either the order of the commission or the order of the Texas commission, or both. As above stated, however, the question of procedure on their part was a matter for them alone to decide.

CONCLUSION.

We have shown that the standard rates were prescribed by the Texas commission for the purpose of establishing reasonable rates for the transportation of traffic between points in the State of Texas; that the commodity rates were prescribed by the Texas commission for the sole purpose of offsetting differences in interstate rates; that, upon application, the commission prescribed rates which it found to be reasonable *per se* for the transportation of interstate traffic from Shreveport; that the latter rates are the same, relatively, as said standard rates, and have been put in force by the appellants named in the commission's order; that the reasonable rates so prescribed by the commission are much greater in each instance than said commodity rates; that the commission, upon substantial evidence, and after accord- ing a full hearing in the premises, found the differences in rates last above mentioned to be an undue discrimination against said interstate traffic, and that, by an order regular in form, the commission required

the appellants referred to to remove said discrimination.

We have also shown that the power of the Congress to regulate commerce among the several States is plenary, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution; that by sections 3 and 15 of the act to regulate commerce the Congress has authorized the commission to determine whether a discrimination against interstate commerce is undue, and, if found to be so, to require its removal; that in requiring the removal of said discrimination the commission did not exceed the authority so conferred upon it, unless a proviso contained in section 1 of the act has the effect of depriving the commission of authority over such a discrimination, and that, reasoning by analogy from former decisions of this court, the proviso does not have that effect, because the words "wholly within one State," contained in the proviso, limit its operation to intrastate traffic which concerns only one State and does not affect any other State.

To construe the provisions of the act in accordance with the contentions of the appellants would inevitably have the effect, we submit, of clothing the individual States with control over a very large portion of the interstate commerce of the country, and of rendering impossible proper regulation of the remaining portion of that commerce. Such construction would also, we think, unnecessarily deprive the commission of power to remove and prevent harmful and injurious

discriminations against interstate commerce, while, as this court has repeatedly said, such removal and prevention was the primary purpose that Members of the Congress had in view when they framed and passed the aforesaid act.

Upon the record in this case, and for the reasons above set forth, we insist that the decrees of the Commerce Court dismissing the petitions of the appellants are correct and should be affirmed.

Respectfully submitted.

P. J. FARRELL,

Solicitor for Interstate Commerce Commission,

Appellee.



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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

HOUSTON, EAST & WEST TEXAS RAILWAY Company et al., appellants, v.	} No. 567.
UNITED STATES, INTERSTATE COMMERCE Commission, et al., appellees.	

THE TEXAS & PACIFIC RAILWAY COMPANY et al., appellants, v.	} No. 568.
UNITED STATES, INTERSTATE COMMERCE Commission, et al., appellees.	

APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR THE UNITED STATES.

The transcript references herein are to the transcript in No. 567.

The facts are fully stated in the opinion below (in No. 568), which is reported in 205 Fed., 380, and they also appear in the commission's report. (Tr., pp. 21-27; 23 I. C. C. Rep., 31.)

THE QUESTION.

The question raised is that which was expressly reserved in the *Minnesota Rate case* (230 U. S., at p. 419), namely:

Whether the Interstate Commerce Commission has power to deal with discriminations resulting from a relation between interstate and intrastate rates.

In this particular instance the discrimination was not merely an incidental and indirect result of State action, such as were those dealt with in the *Minnesota case*, but a direct and intended result of such action. The Texas commission issued its order for the express purpose of obstructing interstate commerce by discriminating against it in favor of intrastate commerce. (Tr., pp. 21-26.) Its order was, therefore, void as a direct encroachment on interstate commerce within *L. & N. Ry. Co. v. Eubank* (184 U. S., 27, 36), as explained in the *Minnesota cases* (230 U. S., at p. 429), because (to quote the opinion in the later case) "it linked the interstate rate to the rate for the shorter haul and thus the interstate charge was directly controlled by the State law." (230 U. S., p. 429.) The *intention* to affect interstate commerce through action on intrastate commerce "links" the two together, and gives the State action that "privity"—with interstate commerce (Mr. Justice, now Mr. Chief Justice, White) in the *Northern Securities case* (193 U. S., at pp. 394-395), which distinguishes direct State action from indirect action, such as was involved in

the Minnesota case. This effect of the intention was recognized in *Swift v. U. S.* (196 U. S., 375, 396-397), and *Loewe v. Lawlor* (208 U. S., 274, 296-297). The brief of the governors in the State rate cases argued that absence of intent in those cases prevented the State action from being a direct regulation of interstate commerce, and that was a principal ground of the decision of Judge Smith McPherson upholding the State rates in the *Missouri rate case*. (*St. Louis & S. F. R. Co. v. Hadley*, 168 Fed., 317, p. 343.)

But, whatever value this point might have had to the railroads either in a suit brought by them to have the order of the State commission set aside (like the Minnesota case) or as a defense to them against an action for violation of the order (like the *Eubank case*, *supra*), it seems to have no importance here because this is a question not so much of the power of the Texas commission as of the power of the Interstate Commerce Commission. There is no basis apparent to us for claiming that Congress intended to give the commission jurisdiction over merely such "mixed" discriminations as may be the intentional result of State action and not over such as are the unintentional result, as in the Minnesota case. It seems impossible to imagine that Congress could have intended to draw such a distinction, and therefore we shall argue the case on the question whether the commission has authority to deal generally with these mixed discriminations.

FIRST POINT.

THE POWER TO DEAL WITH THE RELATION BETWEEN THE TWO KINDS OF RATES (*AS A RELATION*) LIES EXCLUSIVELY IN CONGRESS AND WAS BEYOND THE POWER OF THE STATES EVEN IN THE ABSENCE OF CONGRESSIONAL ACTION.

L. & N. Railroad Company v. Eubank (184 U. S., 27, 36, *supra*).

The Minnesota Rate Cases (230 U. S., 352, p. 429, *supra*).

Alabama & Vicksburg Railway Company v. Mississippi Railroad Commission (203 U. S., 496), which is relied on by the brief for appellants in No. 567 (p. 28), was a case in which both branches of the discrimination were intrastate, and it did not affect a relation between interstate and intrastate rates.

SECOND POINT.

SECTION 3 OF THE ACT TO REGULATE COMMERCE INTENDED TO PROHIBIT ALL DISCRIMINATIONS OVER WHICH THE POWER OF CONGRESS WAS EXCLUSIVE.

I. THE LANGUAGE AND PURPOSE OF SECTION 3.

The section provides as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation,

or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (24 Stat., 379.)

It would be difficult to suggest language more sweeping or better calculated to confer upon the Interstate Commerce Commission all the power over railroad discrimination that Congress itself possessed. Indeed, this court in earlier cases has pointed out the comprehensive purpose of the act and its plain intent to cover the *whole* of the *exclusive* field of Congress. For example, in *Texas & Pacific Ry. Co. v. I. C. C.* (162 U. S., 197, 211, 212) the court said:

The scope or purpose of the act is, as declared in its title, to regulate commerce. It would, therefore, in advance of an examination of the text of the act, be reasonable to anticipate that the legislation would cover, or have regard to, *the entire field of foreign and interstate commerce, and that its scheme of regulation would not be restricted to a partial treatment of the subject.* * * *

It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (excepting commerce wholly within a State), as well that between the States and Territories as that going to or coming from foreign countries.

Having thus included in its scope *the entire commerce of the United States.* * * *

Nevertheless it is claimed that this particular class of discriminations, though a portion of the exclusive

field of Congress, was left untouched by the sweeping language of this section, and remains therefore in a state of chaos, uncontrolled by law.

No such claim has support in the language of the section which, as we have said, is as sweeping in affirmatives and negatives as it well could be. And as the beneficial purposes of the act require the broad construction, it should be given. *N. Y., N. H. & H. R. Co. v. I. C. C.* (200 U. S., 361, 391).

We do not need to amplify these considerations here because they are thoroughly presented by the opinion below, the Report of the Commission (T., pp. 29-34), and the brief of its solicitor; nor do we need to expound the practical importance of not having this portion of the exclusive power of Congress unexercised, for that is fully stated in the same opinions and brief and it was also before the court in vivid detail in the State rate cases and summarized in its opinion.

In passing, however, we may repeat that the ultimate effect of such a policy would be to permit that State which adopts the narrowest and most illiberal policy toward its railroads to set the standards for all the rates in its immediate region, and perhaps throughout the country at large. In other words, interstate rates would be made by the least generous State commission, and the adoption of a liberal and farsighted policy (encouraging upkeep from operating expenses, for example), although a matter of the greatest national importance, might be seriously obstructed if not rendered wholly impossible.

And regardless of the effect upon interstate commerce one State could pare its intrastate freight rates down to the irreducible minimum of confiscation. Other States could do the same. "Embargo may be retaliated by embargo and carriers will be halted at State lines." (*Okla. v. Kansas Natural Gas Co.*, 221 U. S., 229.)

That Congress did not intend rigidly to exclude all intrastate matters, even however vitally related to interstate commerce, is shown by its inclusion of such "mixed" matters in at least three other sections of the act: Section 1, concerning switch connections and through routes and joint rates; section 20, concerning reports (*I. C. C. v. Goodrich Transit Company*, 224 U. S., 207, *supra*); and section 23, concerning car distribution (*Hampton v. St. L. & I. M. R. Co.*, 227 U. S., 456).

Similarly in other recent statutes it has dealt with matters in which State and interstate commerce were interwoven, as, for instance, the hours of service act, 34 Stat., 1415 (*B. & O. R. Co. v. I. C. C.*, 221 U. S., 612-618, and *Northern Pacific R. Co. v. Washington*, 222 U. S., 370); the safety-appliance act, 32 Stat., 943 (*Southern Railway Co. v. United States*, 222 U. S., 20, 26); and the employer's liability act (*Mondou v. N. Y. N. H. & H. R. R. Co.*, 223 U. S., 1, *supra*, and *Pederson v. D. L. & W. R. Co.*, 229 U. S., 146).

No case has been found which compels a different view.

II. THE PROVISIO IN SECTION 1.

It is claimed that the proviso in section 1 carves down the scope of section 3 so as to exclude this class of discriminations from its unrestricted general terms.

(1) But a study of this proviso and its history makes it clear that it really has no relation to *inter-state* commerce and was not intended as a limitation upon the commission in respect to that commerce. It dealt exclusively with *foreign* commerce, and was incident to, as well as interwoven with, those clauses which defined the commission's power over that subject. Congress gave the commission power over all such foreign commerce as was a combination of internal railroad and foreign; and in this proviso it sought to disclaim clearly any intention, while doing this, to give the commission jurisdiction of any intrastate commerce which did not go into foreign commerce.

SECTION 1. (As amended June 29, 1906, April 13, 1908, and June 18, 1910.) That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be consid-

ered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or

from a foreign country from or to any State or Territory as aforesaid.

The words are "wholly within one State *and* not shipped to or from a *foreign country*, from or to any State or Territory as aforesaid"; and it means "wholly within one State *which* is not shipped to or from a foreign country, etc."

This was the explanation of the proviso given by Senator Cullom in his opening statement on behalf of the committee submitting the bill as follows:

SECTION 1.

* * * While the provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and effectively it has been deemed necessary to extend its application also to *certain classes of foreign commerce which are intimately intermingled with interstate commerce*, such as shipments between the United States and adjacent countries by railroad, and the transportation by railroad of shipments between points in the United States and ports of transshipment or of entry when such shipments are destined to or received from a foreign country on through bills of lading. *To avoid any uncertainty as to the meaning of these provisions in regard to what may be at the same time in some instances State and foreign commerce*, it is expressly provided that the bill shall not apply to the transportation of property wholly within one State and not destined to or received from a foreign country. (Cong. Rec., 49th Cong., 1st sess., vol. 17, p. 4, p. 3472; Painter's Debates, p. 5.)

(2) If, however, the proviso is nevertheless construed as relating to the jurisdiction over interstate commerce, the court below was right in holding that it was a disclaimer and not a renunciation. This was also the view of it taken by this court in the *Goodrich Transit Company* case (224 U. S., at page 207):

The proviso, at the end of the section, that its terms shall not apply to the transportation of passengers or property wholly within one State was inserted for the purpose of showing the congressional purpose not to undertake to regulate a commerce wholly domestic.

The words "wholly within one State," if taken as relating to interstate commerce, are merely the converse of the phrase "among the States," used in the Constitution; and following the construction given to that phrase by *Gibbons v. Ogden* (9 Wheat., 1), and ever since, it means commerce "which does not extend to or affect other States." See cases quoted by the opinion below and the definition as stated in *Mondou v. N. Y. & H. R. R. Co.* (223 U. S., 1). (Quoted in the commission's report at Record page 31, and in the brief of the solicitor for the commission at page 28.)

III. THE CULLOM REPORT AND THE DEBATES.

The committee's report and the Debates throw very little affirmative light on the question, excepting that, as elsewhere stated, they show that the proviso in section 1 was not intended to affect the jurisdiction over interstate commerce but only over foreign commerce. They do demonstrate, however, the

general proposition that Congress intended to cover its exclusive field, and to leave vacant no part of its jurisdiction which *could not* be covered by the States.

This appears from the following passages of the Cullom report (S. Rept. No. 46, pt. 1, 49th Cong., 1st sess.):

The decisions to which reference has been made conclusively establish, in the judgment of the committee, the following propositions as to the power of Congress, under the commercial clause of the Constitution, to regulate all railroads engaged in interstate commerce within the United States:

(1) Commerce, in the meaning of the Constitution, includes the transportation of persons and property from place to place by railroad.

(2) Commerce among the States includes the transportation of persons and property from a place in one State to a place in another State. Interstate commerce is all commerce that concerns more States than one, and embraces all transportation which begins in one State and ends in or passes through another State.

(3) The power to regulate such commerce is vested exclusively in Congress without any limitations as to the measures to be adopted or the means to be employed in its discretion for the public welfare.

(4) *The States being without power to regulate interstate transportation, the people must look to Congress alone for whatever regulation may be necessary as to interstate commerce * * ** (pp. 38-39).

In several of the decisions already quoted the courts have pointed out the impracticability of allowing each State to impose such restrictions as it pleased upon the commerce passing into, through, or beyond its borders, and have confined the jurisdiction of the State's authority to the commerce originating and terminating within its own domain—that which is strictly domestic. Commerce must be State or interstate, and either can be subject to but one jurisdiction and set of regulations. This is evidently the only safe rule. The disastrous effects of any other construction need not be enlarged upon.

In the exercise of their undoubted right to regulate, the States have been hampered by their inability to apply their regulations to interstate commerce, which comprises, in most instances, the greater portion of the business transacted within their borders by railroads. The essence of the effective regulation of business transactions is equality and uniformity, and this is impossible as to two transactions alike in every other respect when one reaches across a State line and the other does not. In the controversies that naturally arose over these questions in different States, as the records of the courts demonstrate, the railroad companies have not hesitated at every opportunity to insist upon and take advantage of the exclusive power of Congress to regulate interstate commerce. And, on the other hand, the records of Congress show that they have been equally swift to maintain and to deprecate interference with the rights of the States

whenever national regulation has been proposed. With its authority restricted to less than half of the business operations of the transportation companies subject to its jurisdiction, the obstacles encountered by a State in the exercise of a satisfactory supervision over the railroads engaged in business within its borders and in the administration of equal justice to all its citizens who might use them are apparent. When these difficulties, with all the opportunities they present for evasion of the State's authority, are understood, it is not a matter of wonder that the various State commissions should fail to accomplish all that has been expected of them, but it is rather a matter of surprise that they should have succeeded in bringing about the beneficial results which are acknowledged as a result of their labors * * * (pp. 44-45).

National legislation is necessary to remedy the evils complained of, because the operations of the transportation system are, for the most part, beyond the jurisdiction of the States, and, until Congress acts, not subject to any governmental control in the public interest.

The States have no power to regulate interstate commerce, and it appears from the evidence that even their control of their own domestic traffic is restricted and frequently made inoperative by reason of its intimate intermingling with interstate commerce and by the present freedom of the latter from any legislative restrictions. Some of the difficulties of effective State regulation in the absence of national legislation have been pointed out

elsewhere in this report, and illustrations have been given of the greater volume and importance of interstate as compared with State traffic. National supervision would supplement, give direction to, and render effective State supervision, and is especially necessary as the only method of securing that uniformity of regulation and operation which the transportation system requires for its highest development.

The clearly established fact that, by reason of the constitutional division of powers between the States and the General Government, the States have been able only to partially control the business of transportation within their own borders has been the principal inciting cause of the popular demand for national regulation, and is sufficient, in the judgment of the committee, to call for such action by Congress as will make effective the means of regulation found necessary and adopted by the States.

National legislation is also necessary, because the business of transportation is essentially of a nature which requires that uniform system and method of regulation which the national authority can alone prescribe (pp. 178-179).

Though here, and permeating the debates, the purpose is strongly stated to cover whatever the States could not cover, and *because* they could not cover it, especially in reference to discrimination, including long and short haul, it must be admitted that the particular application of this general principle to

"mixed" discriminations was not directly considered, so far as we can find, excepting in the following instances:

(a) Senator Brown said:

Now, I understand it is contended that the Pennsylvania Railroad can charge 50 cents per hundred pounds from Pittsburgh to Philadelphia, being the same rate charged from Chicago to Philadelphia, because the freight passes all the way from Pittsburgh to Philadelphia in the State of Pennsylvania and over the Pennsylvania Railroad, and that it is therefore no violation of the act to charge as much from Pittsburgh to Philadelphia as from Chicago to Philadelphia.

I confess I can not quite understand how this can be done without a violation of the act, which forbids the charging of a less rate for a longer than for a shorter distance. If the bill when properly construed means that, the rate being 50 cents per hundred pounds from Chicago to Philadelphia, the Pennsylvania Railroad may charge 50 cents from a station 20 miles from Philadelphia to the latter place, then I do not see how the passage of this provision of the bill into a law remedies complaints of inequality in rates or how such a law could be claimed to be equitable and just; and if the construction mentioned be the true one—that you may charge as much between any two stations on the line as you charge for the whole length of the line—then the bill would legalize greater inequality than any that is now practiced by the railroads against which the

greatest complaint is made. (Cong. Rec., 49th Cong., 1st sess., vol. 17, p. 4404; Painter's Debates, p. 70.)

(b) Senator Sewell moved an amendment to give the commission jurisdiction over an intrastate railroad if it competed with an interstate line between the same points. His explanation of this amendment and the disposition of it were as follows:

In addition to that, this amendment would bring within the provisions of this interstate-commerce act as proposed the lines that run through one State in competition with lines that run through two or three States to the same point. I will give the instance of the New York Central running to a point on the Lakes, both its starting point and its terminus being within one State. It would not be within the provisions of the act without this amendment. There are lines running through New Jersey, New York, and Pennsylvania to and from the same points which come within the provisions of the act. That would be one instance where it would work to the disadvantage of the general railroad interests of the country. The New York line would be governed by the State law, while the lines running through New Jersey, and other States would be governed by the interstate-commerce act of Congress. I submit that it would be a great injustice to those lines to oblige them to come under this act, and leave the line running in one State to be perfectly free to act in the matter competition, in the matter of rates, and in the changes of their schedules as they saw fit.

Mr. INGALLS. Is this amendment in print?

The PRESIDENT pro tempore. It has been somewhat modified, but the original is in print. The question is on the amendment proposed by the Senator from New Jersey [Mr. Sewell].

Mr. MILLER. I suggest that this amendment lie over and be printed. Undoubtedly there will be another day for this bill. I confess I do not entirely understand the scope of the amendment. Certainly the case cited by the Senator as to a road in New York running from New York City to the Lakes is not exactly correct, because the bill as it now stands controls the transportation of all interstate commerce wherever the railroad company connects with or forms a continuous line to another State, or where part of it is by rail and part of it by water. So any New York line connecting with a line of steamers upon the Lakes would come directly under the provisions of the bill as it now stands, and it is not subject to the objection presented by the Senator.

Mr. SEWELL. The Senator from New York fails to understand my explanation. There are some lines that run through one State to a given point, while another line reaching the same competing point runs through two or three States. The latter would come under the provisions of this interstate-commerce bill, while the line running through one State would not come under the provisions of the bill without this amendment.

Mr. MILLER. May I ask the Senator a question? Is it possible that Congress can legislate upon a line confined entirely to the

limits of one State for the business upon that line not going any farther or connected with any line beyond it? If the object of the amendment is to produce that result, it seems to me that it should have a good deal of consideration before Congress shall undertake to assume any such authority as that. If the amendment proposes to do that thing, it had better be considered very carefully by the Senate before it acts upon it, or it had better reject it at the start.

Mr. McMILLAN. If this amendment is to go over and be printed, I desire to offer another amendment.

The PRESIDING OFFICER (Mr. Frye in the chair). An amendment to the pending amendment?

Mr. McMILLAN. No, sir; an amendment to the bill, so that it can be printed.

The PRESIDING OFFICER. The Senator from Minnesota proposes an amendment which he asks to have printed. That order will be made.

Mr. ALLISON. Let it be read.

The PRESIDING OFFICER. The proposed amendment will be read for information.

The CHIEF CLERK. The proposed amendment is to insert after the word "lake," in line 13 of section 4, the words:

"Or by a parallel railroad not within the jurisdiction of the United States."

Mr. CULLOM. The amendment offered by the Senator from New Jersey [Mr. Sewell] is exactly the printed amendment that is upon the tables of the Senators, except that as now presented it is amended to conform in the use of terms with

the other provisions of the bill. So I think there is no difficulty in Senators seeing what the amendment means without having any delay on account of it. * * *

Mr. INGALLS. Did the bill as originally introduced contain a provision similar in terms to this?

Mr. CULLOM. The proposition was originally before the committee and was considered by the committee and rejected, if I may be allowed to refer to what was done in committee. * * *

Mr. INGALLS. May I ask the Senator upon what ground in the opinion of the committee it could be claimed that Congress could exercise jurisdiction over a railroad both of whose termini were within the limits of a State?

Mr. CULLOM. The committee has not undertaken to exercise any such jurisdiction.

Mr. MILLER. I will suggest to the chairman that that portion of the amendment certainly never was considered by the committee favorably, or, as I understand, by any member of the committee. (Cong. Rec., 49th Cong., 1st sess., vol. 17, pt. 4, p. 3722.)

(c) Senator Morgan argued in opposition that the bill was fundamentally wrong in planting itself on the division by State lines, rather than upon State obstructions to interstate commerce. The substance of his argument is in the following passages:

I am not attempting to illustrate my point by presenting a difficulty in the execution of the law as proposed in this bill. I am endeavor-

oring to show that it is a mistake, if not a legal impossibility, to measure the constitutional power of Congress to regulate commerce among the several States by the mere fact that the points of delivery and shipment of goods were in different States. This power of Congress rests on quite different grounds than these narrow and embarrassing views of the subject. * * *

It may be assumed, without any irreverence or any neglect of filial duty, that it is just as wrong for Congress to interfere with commerce in the States as it is for any State to interfere with the commerce between it and any other State. We ought, if we can, to find some proper and useful field of operation for the power of Congress to regulate commerce between the States that will not bring Congress and the State governments into constant and irreconcilable controversy over these delicate and important subjects.

In the case I have mentioned, of the transportation of goods 400 miles, from Alexandria, Va., to the Tennessee line and 20 feet across that line to the point of delivery, it is a patent absurdity to say that a law of the United States that controls the price of the freight through Virginia is not a law that controls and regulates commerce within Virginia. Such an act of Congress is quite as open to question upon constitutional grounds as a law of Virginia would be that provided a fixed rate per ton per mile on freight for the whole distance it is carried within that State.

But under this bill the national character imparted to the freight by consigning it to Bristol in Tennessee rides down and defies the power of Virginia over her own people, her railroads that the State may own, and over commerce and trade in articles grown on her soil, and relegates the entire control of all these to Congress on a margin of ten feet of Tennessee soil included in the designated line of transit. The supremacy of the laws of Congress over those of Virginia in such a case ought to have a more rational basis. On this basis, no matter which of these laws gives the greatest security, justice, equality, and freedom to commerce, the supremacy is accorded to geography. Congress can not create nor can it prohibit commerce between the States in time of peace. (Cong. Rec., vol. 18, pt. 1, 49th Cong., 2d sess., p. 397; Painter's Debates, pp. 62-63.)

(d) And at one stage Senator Edmunds said, in connection with the long and short haul clause:

Mr. EDMUNDS. So it is. That is perfectly true. I did not vote on the original proposition at all, as I came in just as the yeas and nays were being taken in Committee of the Whole. I am afraid that that is going too far, and that you are going to interfere with the purely local traffic of these lines in States and merely across a river, which is a nominal line for all business purposes between one State and another, and that you are going to carry your great objects so far as to hamper and interfere with the operations of these local affairs to the

injury not only of the general public but of the local public, because their interests are really interests in common, for all that they pay goes to make up the mass of money necessary to carry on the operations of the railroads and give a reasonable profit to those who invested their money in them.

While I agree that striking it all out and not amending it at all goes much further than my amendment proposes, I think it is going too far, and that it is safer for the objects of the bill and for what is truly interstate commerce not to undertake to carry the principle of equality of distance, and equality of haul, and equality of price into regions where we have no constitutional power to arrange it, as between the western and the eastern borders of Ohio, and then say that from the eastern side of Ohio to Pittsburgh, a distance of only 25 miles, if you please, or less, the railway shall be under a compulsion to make one charge, while from the eastern border of Ohio to the western border you can not touch it at all, and thus discriminate by the operation of an act of Congress between citizens of the same State engaged in the same business.

Therefore by such a provision, which carries it down to its utmost detail that we can, you are creating a division and a discordance and an injustice between the local traffic that is wholly within the State and that local traffic which happens to be a little out of the State and into it which only we can touch. If Congress had the power to regulate the whole thing in States as well as between States, then

I should agree with the principle contained in the amendment of the Senator from West Virginia, that there ought to be equality of substantial distance and weight and that sort of thing everywhere; but we have not that power. (Cong. Rec., 49th Cong., 1st sess., vol. 17, pt. 5, p. 4404; Painter's Debates, p. 372.)

So far as we have found, there is nothing else in the report or in the Debates which could enlighten the court, excepting the general trend of the discussion, as indicating a broad purpose to cover all discrimination within the exclusive field of Congress.

CONCLUSION.

The judgment should be affirmed.

WINFRED T. DENISON,
Assistant Attorney General.

THURLOW M. GORDON,
Special Assistant to the Attorney General.

OCTOBER, 1913.







IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No 567.

H. E. & W. T. RY. CO. ET AL.

vs.

UNITED STATES ET AL.

No. 568.

TEXAS & PACIFIC RY. CO. ET AL.

vs.

UNITED STATES ET AL.

APPEAL FROM COMMERCE COURT.

BRIEF OF THE ARGUMENT.

These cases involve appeals from decrees of the Commerce Court dismissing bills brought to enjoin an order of the Interstate Commerce Commission.

The main proposition involved is whether under the act to regulate commerce the Interstate Commerce Commission has jurisdiction to regulate rates made by a State railroad

commission, upon the ground that they discriminate against the interstate rate.

Subsidiary to this is the proposition whether the carrier, by complying with the State rate, obedience to which is enforced by severe penalties accruing both to the State and to the individual shipper, is guilty of that voluntary and unlawful discrimination denounced by the statute.

Behind both lies the grave and more doubtful question—as to the authority of Congress to regulate rates between points wholly within a state, upon a transit which is no part of an interstate or foreign journey, because of an incidental effect upon interstate rates.

The facts in brief: Shreveport, Louisiana, is situated about forty miles from the Texas State line, two hundred and thirty-two miles from Houston, Texas, and one hundred and eighty-nine miles from Dallas. It competes with both cities for trade of intervening territory.

The rates, class and commodity, prescribed by the Texas Railroad Commission, which has full power under the Texas law to initiate and fix rates, are lower for like distances from Houston and Dallas towards Shreveport than are the interstate rates from Shreveport into Texas. The difference is substantial and injuriously affects the commerce of Shreveport.

The Railroad Commission of Louisiana filed complaint against the carriers, appellants herein, before the Interstate Commerce Commission, alleging, first, that the rates, class and commodity, from Shreveport into Texas, were unreasonably high, and, secondly, that the Texas State rates were discriminative. The Railroad Commission of Texas was not made a party to the proceedings.

The Commission held that the class rates from Shreveport to Texas were unreasonably high and ordered them reduced to the level of the Texas class rates for similar distances.

It did not hold that the commodity rates from Shreveport

to Texas were unreasonable *per se*, but did hold that the Texas rates, being substantially lower, were illegally discriminative and ordered the carriers to equalize them.

The decision was by a divided commission, Commissioners Harlan, Clements, and McChord dissenting upon the two first propositions. Commissioner Clark expressed doubts, but acted with the majority.

The carriers brought suit in the Commerce Court to enjoin the enforcement of the order as a whole.

That portion of the bills, however, which attacked the Commission's order as to the class rates was abandoned, these rates having been held unreasonable upon conflicting evidence. So that the sole question before the Commerce Court and the sole question here is as to the validity of that portion of the order affecting the commodity rates.

The Commerce Court held that the Commission had jurisdiction under the act to control an intrastate rate which discriminates against an interstate rate; that the rates prescribed by the Railroad Commission of Texas were void, and that obedience thereto by the carriers was therefore voluntary and unlawful. Judge Mack dissents from the opinion, but concurs in the result. We will discuss the points involved in the inverse order of their importance.

First. If the Jurisdiction of the Interstate Commerce Commission be Conceded, the Discrimination is Not Voluntary or Illegal.

The Texas Commission has full power, statutory and constitutional, to fix rates. To charge or collect a rate in excess of the Commission rate is, under the Texas law, an extortion, punishable by fine not to exceed five thousand dollars. A penalty not to exceed five hundred dollars also accrues to each shipper on each shipment. Submission to these rates cannot be said to be voluntary. (*E. T., Va. & Ga. Ry. vs. I. C. C.*, 181 U. S., 1; *I. C. C. vs. C., N. W. Ry.*, 209 U. S., 122; *I. C. C. vs. Deffenbaugh*, 222 U. S., 48; *L. & N. Ry. vs.*

Behlmer, 175 U. S., 648; I. C. C. *vs.* L. & N. Ry., 190 U. S., 273; A., T. & S. F. Ry. *vs.* U. S., 190 Fed., 856.)

The Commission apparently holds that the Railroad Commission of Texas designedly installed these rates for the purpose of discriminating against Shreveport. But do the facts stated justify this conclusion of fact. There is nothing to show that the rates on the H., E. & W. T. Ry. and the H. & S. R. R., from Shreveport to Houston, are not the usual mileage rates applicable over all lines in Texas. This is the fact. It is true that the rates from Dallas eastward towards Shreveport upon the Texas & Pacific, the M., K. & T. Ry. Co. of Texas, and the St. L. S. W. of Texas are 20 per cent lower than the general scale of rates. There is nothing in the record to show that these rates are unreasonable *per se*. A mere disparity of rates does not *per se* constitute a discrimination. The action of the State Commission is presumptively just and reasonable. If the reevenue on the traffic as a whole was reasonable, it was within the discretion of the Texas Commission to make rates, lower perhaps than some other reasonable rate, yet sufficient to pay the cost of transportation with a margin of profit. The intent of the Railroad Commission of Texas is immaterial. As stated by Chief Justice Brown in Galveston Chamber of Commerce *vs.* R. R. C. of Texas, 145 S. W. (Tex.), 580, "neither the methods adopted by the commissioners in fixing rates, nor the motives or purposes prompting them, are subject to judicial inquiry."

The facts relied upon by the Interstate Commission are public reports of the Railroad Commission of Texas, showing a general intention upon the part of the Commission to procure by co-operation with the carriers a proper relation of State and interstate rates. At the most it shows an intent upon the part of the Commission to so fix the local less-than-carload distributing rates, in such relation to the carload interstate rates as to enable the State jobber to compete with the outside less-than-carload shipper. In other words, the

Commission announced the policy of fixing the less-than-carload distributing rates at such amount as will enable the jobber, say at Dallas, to buy goods in carloads from St. Louis, and ship to contiguous territory to the retail merchant in less-than-carload lots in competition with the St. Louis merchant who would ship direct in less-than-carload lots to the same retailer. The result of this policy has been to build up all over Texas jobbing centers of importance. If these rates are reasonable in themselves, can it be said that they constitute a discrimination against the St. Louis merchant? Must not each rate be judged by its own surrounding conditions, the density of the traffic, the operating revenues, the operating expenses? These discussions of general conditions in the official reports cited by the Louisiana Commission in its brief, have no connection with the immediate rates here involved, but are supposed to be indicative of a so-called "protective policy." But, suppose there was a logical connection! This court, in *Smyth vs. Ames*, 169 U. S., 466, and more particularly in the recent State rate cases, has held that in testing State rates the State and interstate revenues and values must be severely segregated. If the density of local State traffic is such, if the total State revenues and operating revenues are such, that low local State rates can be justified, are the people of that State to be deprived of these rates for the reason that interstate revenues, expenses and values justify a higher rate for the same distance. In this connection the opinion of this Court, in *Simpson vs. Shepard*, is pertinent, where, speaking through Mr Justice Hughes, and directly to this point, it said:

"Neither by the original act nor by its amendment, did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or authorize the Commission to prescribe either maximum or minimum rates for intrastate traffic."

And again it is said:

"Similarly the authority of the State to prescribe what shall be reasonable charges of common carriers for intrastate transportation, unless it is limited by the exertion of the constitutional power of Congress is State wide. As a power appropriate to the territorial jurisdiction of the State, it is not confined to a part of the State, but extends throughout the State,—to its cities adjacent to its boundaries as well as those in the interior of the State. To say that this power exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those that are fixed by the carrier for interstate transportation, is to maintain the power in name but deny it in fact."

The Interstate Commerce Commission and the Commerce Court, in avoiding the force of the decisions of this Court above cited, say that it was the duty of the carriers to have contested these State rates in court, and because they did not do so, then submission was voluntary. The difficulty of attacking a rate upon a single commodity is well illustrated in *M. & St. L. Ry. vs. Minnesota*, 186 U. S., 267; *Northern Pac. Ry. vs. North Dakota*, 216 U. S., 579, and in *Wilcox vs. Consolidated Gas Co.*, 212 U. S., 54, as well as by very recent decisions of this Court. Two of these appellants, the Missouri, Kansas & Texas Railway Company of Texas, and the St. Louis Southwestern Railway Company of Texas, would forfeit charter rights by applying for preliminary injunctive relief against the orders of the Railway Commission of Texas. Could these appellants even now safely follow the advice of the Commerce Court and treat these Texas rates as void? Could they rely upon the unofficial expression of a single member of the Commission, as legal proof binding the other members of the Commission, that the rates were designed to discriminate against Shreveport? Such litigation would indeed have been hazardous.

Recognizing the force of these considerations Commissioner Lane suggests that the carriers might have applied to the

Commission for relief. There are, however, no provisions in the Act to Regulate Commerce whereby a carrier can bring the officials of a State before the Interstate Commission, nor is there machinery provided whereby the orders of the Interstate Commerce Commission can be made effective against a State Commission. Indeed the act seems to proceed upon the theory that the State Commission is of equal dignity with the Federal body.

It is submitted, therefore, that discrimination has not been shown, that the facts found show no unlawful intent and that the rates complained of are not voluntary rates within the decisions of this Court.

Second. *The transportation affected is wholly within the State of Texas, constitutes no part of an interstate transit, and under the proviso to section one of the Act to Regulate Commerce the Interstate Commerce Commission has no jurisdiction to regulate the same.*

The terms of the proviso are clear and unambiguous. They are as follows:

"Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The majority of the Commission, in order to reach the conclusion that notwithstanding the very clear exclusion of intrastate commerce the Commission had jurisdiction of discriminative intrastate commerce, was under the necessity of overruling its own decisions of many years. Almost continuously since its creation it has steadfastly disclaimed the power it here seeks to exercise.

Memphis Freight Rate Case, 11 I. C. C., 180.

Saunders vs. So. Ex. Co., 18 I. C. C., 415.

Andys Ridge Co. vs. So. Ry., 18 I. C. C., 405.

There are many other cases, but these clearly indicate the views of the Commission. In the first case cited, Memphis complained that the Arkansas rates discriminated against it; in the second Pensacola complained of the Alabama rates from Mobile; in the Andys Ridge Coal Co. case complaint was made of an intrastate Tennessee rate on coal. These three cases are directly in point. In each case the Commission without dissent held that it had no jurisdiction to control the intrastate rate. In the New Jersey Fruit Exchange Case, 2 I. C. R., 84, decided shortly after the institution of the Commission, jurisdiction of all intrastate movement was under the proviso wholly disclaimed. It is interesting to note that Mr. Prouty, though concurring with the majority, in a case decided a year after that at bar, Southwestern Shippers Ass'n vs. A., T. & S. F., 24 I. C. C., 570, again reasserted the old doctrine, and held that the Commission had no power to regulate a purely intrastate rate. The contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect is entitled to great respect, especially where failure to amend indicates an implied sanction of that construction by the legislative department (*Robertson vs. Downey*, 127 U. S., 607). This rule has been applied to the administrative holdings of the Commission (*N. Y. & N. H. Ry. vs. I. C. C.*, 200 U. S., 361). With these important holdings of the Commission before it, had Congress intended to confer the jurisdiction which the Commission disclaimed, certainly when the important amendments of 1906 and 1910 were made, the intent of the act would have been made clear. The history of the act, and the decisions of this Court both before and after the passage of the act, show that it was not its purpose to invade the State jurisdiction, but to cover that field of regulation which the State could not enter. In the Granger cases, 94 U. S., 113, this Court held that the State had the right to regulate that portion of an interstate haul within the State. This doctrine was departed from in the Wabash case, 118 U. S., 557, where the long and short-haul

clause of the Illinois act was held an interference with interstate commerce. This great and leading case was decided in October, 1886, just a few months previous to the passage of the act. There was a strong dissent, and while the freedom of the interstate transit was preserved, the absolute right of the State to exclusively control its local commerce was as strongly asserted. With this notable decision immediately before it had Congress intended to confer upon the Commission these powers supposed hitherto to appertain wholly to the State certainly it would have employed words and phrases "apt and efficacious" to that end. In *L. & N. Ry. vs. Ky.*, 183 U. S., 503, the long-and-short-haul clause of Kentucky was before the court. It was clear that the constitutional provision applied only to hauls within the State. It was nevertheless contended that it affected interstate commerce. But the Court said:

"It may be that the enforcement of the State regulation forbidding discrimination in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally; but we have frequently held that such a result is too remote and indirect as to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government to be unlawful must be direct and not the merely incidental effect of enforcing the police power of the State."

The reference of the Government to the congressional debates, on page 17 of its brief, is unfortunate. It there appears that Senator Sewell, of New Jersey, moved an amendment to give the Commission jurisdiction over an intrastate road in competition with an interstate line between the same points. The amendment was rejected by the committee and the Senate.

It is a significant fact that neither the Commission nor the Commerce Court, nor the Government, agree either one with the other in their attempt to escape the plain meaning

and intent of this proviso. Commissioner Lane resorts to the doctrine of necessity, that the proviso is subordinate to section 3, and takes the position that the scheme of regulation would not be complete unless this power was conferred upon the Commission. Commissioner Harlan clearly exposes the fallacy of this argument and shows that so great a power was not to be conferred by construction.

The Commerce Court relies upon a dictum of its own in *D. & R. G. vs. I. C. C.*, 195 Fed., 968; says that the proviso is not an exception but a disclaimer, and that it was intended by the proviso to exempt from the jurisdiction of the Commission "only that intrastate transportation which is not within the power of Congress to regulate." This would place Congress in the attitude of saying that there are certain fields of intrastate jurisdiction which the Constitution does not permit Congress to enter, and these the Commission may not enter. As to all others, however, undesignated though they may be, the Commission is unrestrained. This, we submit, is not only illogical in itself, but is in direct conflict with the rule of construction laid down by this court in *I. C. C. vs. Ry.*, 167 U. S., 505, where this Court held that the granting of grave powers to the Commission was not to be inferred from doubtful and uncertain language.

The Government takes a third and radically different view and contends that the proviso has no relation to interstate commerce and was not intended as a limitation upon the Commission with respect to that commerce, but that it dealt wholly with foreign commerce. Thus construed the proviso is unintelligible.

These curious, subtle, and conflicting constructions never occurred to the Commission during the first twenty-five years of its history. They never occurred to this Court where in the *Larabee Mills* case, 211 U. S., in commenting upon the separate jurisdictions and the necessity of separate control it quoted the proviso as showing the congressional intent to leave the domain of domestic commerce to the State; nor in the *Goodrich Transportation Co.* case, 224 U. S., 1, where

it referred to the proviso "as showing the congressional purpose not to undertake to regulate a commerce wholly domestic"; nor in the Minnesota case, where, after quoting the proviso, it said:

"Congress carefully defined the scope of its regulations and expressly provided that it was not to extend to purely intrastate traffic."

This court, speaking through Mr. Justice Brewer, in *I. C. C. vs. Ry.*, 167 U. S., 505, in holding that under the act as originally passed the Commission had no jurisdiction to prescribe maximum rates, said that the transfer of such grave powers to an administrative body was not to be presumed or implied from any uncertain or doubtful language, and that apt and efficacious words must be used to that end. We look in vain in this act for apt and efficacious words to delegate to the Commission powers which Congress expressly reserved. We look in vain in the act for any machinery, process or permission, by which the officers of the State can be brought before the Commission or made amenable to its process.

Third. Has Congress the Unlimited Power to Regulate Intrastate Commerce Because Conducted by Interstate Carriers, as Asserted by the Interstate Commission.

The masterly review of all the decisions, and of rate regulation State and Federal, by this Court in the recent State rate cases, renders citation of authority unnecessary. It is believed that the reasoning of this Court in the Employer's Liability cases is an answer to the argument of Commissioner Lane, and of the Government in this case. It may be conceded for the purposes of this argument that the Federal Government may regulate and control transportation within a State, if as matter of fact it is essentially interstate in its character. For example, if traffic moves from a point within a State to another point within the State, on local bills, to

points of concentration, to be subsequently moved out to interstate or foreign points, the stoppage being temporary. Here the movement is intrastate, but the commerce is essentially interstate or foreign. Mere geography is not the test, and the Federal right to regulate attaches. It may be even conceded, as suggested by Commissioner Harlan in his dissenting opinion, that if a system of State rates are so low as, while not reaching the point of confiscation, to unduly burden carriers which are instrumentalities of interstate commerce, that Congress by appropriate legislation could control such a situation. Where, however, not only the geographical movement, but the essential nature of the commerce is intrastate, where property, being a part of the general mass of property of the State, at the inception of the movement, moves *in a completed transit* to another point in the State, there again to be mingled with the general mass of property in the State, here the facts do not exist to which the Federal jurisdiction can attach, and it is not believed that any decision of this court will establish the doctrine that such a movement, because of its remote and incidental effect upon interstate commerce, is subject to the control of Congress under its constitutional power to regulate commerce among the States.

Respectfully submitted,

H. M. GARWOOD,
Attorney for Appellants.

HOUSTON, EAST AND WEST TEXAS RAILWAY
COMPANY *v.* UNITED STATES.

TEXAS AND PACIFIC RAILWAY COMPANY *v.*
UNITED STATES.

APPEALS FROM THE COMMERCE COURT.

Nos. 567, 568. Argued October 28, 29, 1913.—Decided June 8, 1914.

The object of the commerce clause was to prevent interstate trade from being destroyed or impeded by the rivalries of local governments; and it is the essence of the complete and paramount power confided

to Congress to regulate interstate commerce that wherever it exists it dominates.

Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule; otherwise the Nation would not be supreme within the National field.

While Congress does not possess authority to regulate the internal commerce of a State, as such, it does possess power to foster and protect interstate commerce, although in taking necessary measures so to do it may be necessary to control intrastate transactions of interstate carriers.

The use by the State of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on any part of that commerce is a ground for Federal intervention; nor can a State authorize a carrier to do that which Congress may forbid and has forbidden.

In removing injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates Congress is not bound to reduce the latter to the level of the former.

Congress having the power to control intrastate charges of an interstate carrier to the extent necessary to prevent injurious discrimination against interstate commerce may provide for its execution through the aid of a subordinate body.

By § 3 of the Act to Regulate Commerce, 24 Stat. 379, 380, Congress has delegated to the Interstate Commerce Commission power to prevent all discriminations against interstate commerce by interstate carriers, subject to the Act, which it is within the power of Congress to condemn.

Where the Interstate Commerce Commission has found after due investigation that unjust discrimination against localities exists under substantially similar conditions of transportation the Commission has power to correct it; and this notwithstanding the limitations contained in the proviso to § 1 of the Act to Regulate Commerce.

The earlier action of the Interstate Commerce Commission was not of such controlling character as to preclude the Commission from giving effect to the Act to Regulate Commerce, and in this case having, after examination of the question of its authority, decided to make a remedial order to prevent unjust discrimination and the Commerce Court having sustained that authority of the Commission, this court should not reverse unless, as is not the case, the law has been misapplied.

No local rule can nullify the lawful exercise of Federal authority; and after the Interstate Commerce Commission has made an order within its jurisdiction there is no compulsion on the carrier to comply with any inconsistent local requirement.

Although there is gravity in any question presented when state and Federal views conflict, it has been recognized from the beginning that this Nation could not prosper if interstate and foreign trade were governed by many masters; and where the freedom of such commerce is involved the judgment of Congress and the agencies it lawfully establishes must control.

An order made by the Interstate Commerce Commission that in order to correct discrimination found to exist against specified localities interstate carriers should desist from charging higher rates for transportation between certain specified interstate points than between certain specified intrastate points, *held* to be within the power delegated by Congress to the Commission; also *held*, that so far as the carriers' interstate rates conformed to what was found to be reasonable by the Commission, they were entitled to maintain them, and that they were free to comply with the order by so adjusting their intrastate rates, to which the order related, as to remove the forbidden discrimination.

205 Fed. Rep. 380, affirmed.

THE facts, which involve the validity of an order of the Interstate Commerce Commission relating to rates between Shreveport, Louisiana, and points within the State of Texas, and the effect of orders of the Railroad Commission of the State of Texas in regard to rates wholly within that State, are stated in the opinion.

Mr. Hiram M. Garwood, with whom *Mr. Maxwell Evarts*, *Mr. James G. Wilson*, *Mr. George Thompson*, *Mr. W. L. Hall* and *Mr. Thomas J. Freeman* were on the brief, for appellants.

Mr. Assistant Attorney General Denison, with whom *Mr. Thurlow M. Gordon*, Special Assistant to the Attorney General, was on the brief, for the United States.

Mr. P. J. Farrell for the Interstate Commerce Commission.

Mr. Ruffin G. Pleasant, Attorney General of the State of Louisiana, and *Mr. Luther M. Walter*, with whom *Mr. W. M. Barrow*, *Mr. M. W. Borders* and *Mr. John S. Burchmore* were on the brief, for the Railroad Commission of Louisiana, Intervenor.

MR. JUSTICE HUGHES delivered the opinion of the court.

These suits were brought in the Commerce Court by the Houston, East & West Texas Railway Company, and the Houston & Shreveport Railroad Company, and by the Texas & Pacific Railway Company, respectively, to set aside an order of the Interstate Commerce Commission, dated March 11, 1912, upon the ground that it exceeded the Commission's authority. Other railroad companies¹ intervened in support of the petitions, and the Interstate Commerce Commission and the Railroad Commission of Louisiana intervened in opposition. The petitions were dismissed. 205 Fed. Rep. 380.

The order of the Interstate Commerce Commission was made in a proceeding initiated in March, 1911, by the Railroad Commission of Louisiana. The complaint was that the appellants, and other interstate carriers, maintained unreasonable rates from Shreveport, Louisiana, to various points in Texas, and, further, that these carriers in the adjustment of rates over their respective lines unjustly discriminated in favor of traffic within the State of Texas and against similar traffic between Louisiana and Texas. The carriers filed answers; numerous pleas of intervention by shippers and commercial bodies were allowed; testimony was taken and arguments were heard.

The gravamen of the complaint, said the Interstate

¹ The Missouri, Kansas & Texas Railway Company of Texas, the St. Louis Southwestern Railway Company, and the St. Louis Southwestern Railway Company of Texas.

Commerce Commission, was that the carriers made rates out of Dallas and other Texas points into eastern Texas which were much lower than those which they extended into Texas from Shreveport. The situation may be briefly described: Shreveport, Louisiana, is about 40 miles from the Texas state line, and 231 miles from Houston, Texas, on the line of the Houston, East & West Texas and Houston & Shreveport Companies (which are affiliated in interest); it is 189 miles from Dallas, Texas, on the line of the Texas & Pacific. Shreveport competes with both cities for the trade of the intervening territory. The rates on these lines from Dallas and Houston, respectively, eastward to intermediate points in Texas were much less, according to distance, than from Shreveport westward to the same points. It is undisputed that the difference was substantial and injuriously affected the commerce of Shreveport. It appeared, for example, that a rate of 60 cents carried first class traffic a distance of 160 miles to the eastward from Dallas, while the same rate would carry the same class of traffic only 55 miles into Texas from Shreveport. The first class rate from Houston to Lufkin, Texas, 118.2 miles, was 50 cents per 100 pounds, while the rate from Shreveport to the same point, 112.5 miles, was 69 cents. The rate on wagons from Dallas to Marshall, Texas, 147.7 miles was 36.8 cents, and from Shreveport to Marshall, 42 miles, 56 cents. The rate on furniture from Dallas to Longview, Texas, 124 miles, was 24.8 cents, and that from Shreveport to Longview, 65.7 miles, was 35 cents. These instances of differences in rates are merely illustrative; they serve to indicate the character of the rate adjustment.

The Interstate Commerce Commission found that the interstate class rates out of Shreveport to named Texas points were unreasonable, and it established maximum class rates for this traffic. These rates, we understand, were substantially the same as the class rates fixed by the

Railroad Commission of Texas, and charged by the carriers, for transportation for similar distances in that State. The Interstate Commerce Commission also found that the carriers maintained "higher rates from Shreveport to points in Texas" than were in force "from cities in Texas to such points under substantially similar conditions and circumstances," and that thereby "an unlawful and undue preference and advantage" was given to the Texas cities and a "discrimination" that was "undue and unlawful" was effected against Shreveport. In order to correct this discrimination, the carriers were directed to desist from charging higher rates for the transportation of any commodity from Shreveport to Dallas and Houston, respectively, and intermediate points, than were contemporaneously charged for the carriage of such commodity from Dallas and Houston toward Shreveport for equal distances, as the Commission found that relation of rates to be reasonable. 23 I. C. C. 31, 46-48.

The order in question is set forth in the margin.¹ The

¹ "This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the Commission in said report finds such rates to be unjust and unreasonable.

"It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to

report states that under this order it will be the duty of the companies "to duly and justly equalize the terms and conditions" upon which they will extend "transportation to traffic of a similar character moving into Texas from

the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit: (rates inserted).

"It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit: (rates inserted).

"It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

"It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

"And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to

Shreveport with that moving wholly within Texas," but that, in effecting such equalization, the class scale rates as prescribed shall not be exceeded.

In their petition in the Commerce Court, the appellants assailed the order in its entirety, but subsequently they withdrew their opposition to the fixing of maximum class rates and these rates were put in force by the carriers in May, 1912.

The attack was continued upon that portion of the order which prohibited the charge of higher rates for carrying articles from Shreveport into Texas than those charged for eastward traffic from Dallas and Houston, respectively, for equal distances. There are, it appears, commodity rates fixed by the Railroad Commission of Texas for intrastate hauls, which are substantially less than the class, or standard, rates prescribed by that Commission; and thus the commodity rates charged by the carriers from Dallas and Houston eastward to Texas points are less than the rates which they demand for the transportation of the same articles for like distances from Shreveport into Texas. The present controversy relates to these commodity rates.

The point of the objection to the order is that, as the discrimination found by the Commission to be unjust arises out of the relation of intrastate rates, maintained under state authority, to interstate rates that have been upheld as reasonable, its correction was beyond the Commission's power. Manifestly the order might be complied with, and the discrimination avoided, either by reducing the interstate rates from Shreveport to the level of the competing intrastate rates, or by raising these in-

those which are contemporaneously observed by said defendants respecting the concentration of cotton within the state of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants."

trastate rates to the level of the interstate rates, or by such reduction in the one case and increase in the other as would result in equality. But it is urged that, so far as the interstate rates were sustained by the Commission as reasonable, the Commission was without authority to compel their reduction in order to equalize them with the lower intrastate rates. The holding of the Commerce Court was that the order relieved the appellants from further obligation to observe the intrastate rates and that they were at liberty to comply with the Commission's requirements by increasing these rates sufficiently to remove the forbidden discrimination. The invalidity of the order in this aspect is challenged upon two grounds:

(1) That Congress is impotent to control the intrastate charges of an interstate carrier even to the extent necessary to prevent injurious discrimination against interstate traffic; and

(2) That, if it be assumed that Congress has this power, still it has not been exercised, and hence the action of the Commission exceeded the limits of the authority which has been conferred upon it.

First. It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several States. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation.' By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate

commercial intercourse from local control. *Gibbons v. Ogden*, 9 Wheat. 1, 196, 224; *Brown v. Maryland*, 12 Wheat. 419, 446; *County of Mobile v. Kimball*, 102 U. S. 691, 696, 697; *Smith v. Alabama*, 124 U. S. 45, 473; *Second Employers' Liability Cases*, 223 U. S. 1, 47, 53, 54; *Minnesota Rate Cases*, 230 U. S. 352, 398, 399.

Congress is empowered to regulate,—that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile v. Kimball*, *supra*); 'to foster, protect, control and restrain' (*Second Employers' Liability Cases*, *supra*). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to pre-

scribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. *Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Railway Co. v. United States*, 222 U. S. 20, 26, 27; *Second Employers' Liability Cases*, *supra*, pp. 48, 51; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194, 205, 213; *Minnesota Rate Cases*, *supra*, p. 431; *Illinois Central Railroad Co. v. Behrens*, 233 U. S. 473.

In *Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission*, *supra*, the argument against the validity of the Hours of Service Act (March 4, 1907, c. 2939, 34 Stat. 1415) involved the consideration that the interstate and intrastate transactions of the carriers were so interwoven that it was utterly impracticable for them to divide their employés so that those who were engaged in interstate commerce should be confined to that commerce exclusively. Employés dealing with the movement of trains were employed in both sorts of commerce; but the court held that this fact did not preclude the exercise of Federal power. As Congress could limit the hours of labor of those engaged in interstate transportation, it necessarily followed that its will could not be frustrated by prolonging the period of service through other requirements of the carriers or by the commingling of duties relating to interstate and intrastate operations. Again, in *Southern Railway Co. v. United States*, *supra*, the question was presented whether the amendment to the Safety Appliance Act (March 2, 1903, c. 976, 32 Stat. 943) was within the power of Congress in view of the fact that the statute was not confined to vehicles that were used in interstate traffic but also embraced those used in intrastate traffic. The court answered affirmatively, because there was such a close relation between the two classes of traffic moving over the same railroad as to make it certain that the safety

of the interstate traffic, and of those employed in its movement, would be promoted in a real and substantial sense by applying the requirements of the act to both classes of vehicles. So, in the *Second Employers' Liability Cases*, *supra*, it was insisted that while Congress had the authority to regulate the liability of a carrier for injuries sustained by one employé through the negligence of another, where all were engaged in interstate commerce, that power did not embrace instances where the negligent employé was engaged in intrastate commerce. The court said that this was a mistaken theory, as the causal negligence when operating injuriously upon an employé engaged in interstate commerce had the same effect with respect to that commerce as if the negligent employé were also engaged therein. The decision in *Employers' Liability Cases*, 207 U. S. 463, is not opposed, for the statute there in question (June 11, 1906, c. 3073, 34 Stat. 232) sought to regulate the liability of interstate carriers for injuries to any employé even though his employment had no connection whatever with interstate commerce. (See *Illinois Central R. R. Co. v. Behrens*, *supra*.)

While these decisions sustaining the Federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle that Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a State, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled.

This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the highways of

interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

It is also to be noted—as the Government has well said in its argument in support of the Commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority. This question was presented with respect to the long and short haul provision of the Kentucky constitution, adopted in 1891, which the court had before it in *Louisville & Nashville R. R. Co. v. Eubank*, 184 U. S. 27. The state court had construed this provision as embracing a long haul, from a place outside to one within the State, and a shorter haul on the same line and in the same direction between points within the State. This court held that, so construed, the provision was invalid as being a regulation of interstate commerce

because 'it linked the interstate rate to the rate for the shorter haul and thus the interstate charge was directly controlled by the state law.' See 230 U. S. pp. 428, 429. It is for Congress to supply the needed correction where the relation between intrastate and interstate rates presents the evil to be corrected, and this it may do completely by reason of its control over the interstate carrier in all matters having such a close and substantial relation to interstate commerce that it is necessary or appropriate to exercise the control for the effective government of that commerce.

It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes.

Having this power, Congress could provide for its execution through the aid of a subordinate body; and we conclude that the order of the Commission now in question cannot be held invalid upon the ground that it exceeded the authority which Congress could lawfully confer.

Second. The remaining question is with regard to the scope of the power which Congress has granted to the Commission.

Section three of the Act to Regulate Commerce provides (February 4, 1887, c. 104, 24 Stat. 379, 380):

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to

any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This language is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn. There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier. It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. The purpose of the measure was thus emphatically stated in the elaborate report of the Senate Committee on Interstate Commerce which accompanied it: "The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations. . . ." (Senate Report No. 46, 49th Cong., 1st Sess., p. 215).

The opposing argument rests upon the proviso in the first section of the act which in its original form was as follows: "*Provided, however,* that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Ter-

ritory as aforesaid." When the act was amended so as to confer upon the Commission the authority to prescribe maximum interstate rates, this proviso was reenacted; and when the act was extended to include telegraph, telephone and cable companies engaged in interstate business, an additional clause was inserted so as to exclude intrastate messages. See acts of June 29, 1906, c. 3591, 34 Stat. 584; June 18, 1910, c. 309, 36 Stat. 539, 545.

Congress thus defined the scope of its regulation and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the Commission to prescribe intrastate rates and thus to establish a unified control by the exercise of the rate-making power over both descriptions of traffic. Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the States or of the agencies created by the States. This was the question recently decided by this court in the *Minnesota Rate Cases*, *supra*. There, the State of Minnesota had established reasonable rates for intrastate transportation throughout the State and it was contended that, by reason of the passage of the Act to Regulate Commerce, the State could no longer exercise the state-wide authority for this purpose which it had formerly enjoyed; and the court was asked to hold that an entire scheme of intrastate rates, otherwise validly established, was null and void because of its effect upon interstate rates. There had been no finding by the Interstate Commerce Commission of any unjust discrimination. The present question, however, was reserved, the court saying (230 U. S. p. 419): "It is urged, however, that the words of the proviso" (referring to the proviso above-mentioned) "are susceptible of a construction which would permit the provisions of section three of the act, prohibiting carriers from giving an undue or unreasonable preference or advantage to any locality, to apply to unreasonable discriminations

between localities in different States, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively. If it be assumed that the statute should be so construed, and it is not necessary now to decide the point, it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts."

Here, the Commission expressly found that unjust discrimination existed under substantially similar conditions of transportation and the inquiry is whether the Commission had power to correct it. We are of the opinion that the limitation of the proviso in section one does not apply to a case of this sort. The Commission was dealing with the relation of rates injuriously affecting, through an unreasonable discrimination, traffic that was interstate. The question was thus not simply one of transportation that was 'wholly within one State.' These words of the proviso have appropriate reference to exclusively intrastate traffic, separately considered; to the regulation of domestic commerce, as such. The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the Commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act. Such a matter is one with which Congress alone is competent to deal, and, in view of the aim of the act and the comprehensive terms of the provisions against unjust discrimination,

there is no ground for holding that the authority of Congress was unexercised and that the subject was thus left without governmental regulation. It is urged that the practical construction of the statute has been the other way. But, in assailing the order, the appellants ask us to override the construction which has been given to the statute by the authority charged with its execution, and it cannot be said that the earlier action of the Commission was of such a controlling character as to preclude it from giving effect to the law. The Commission, having before it a plain case of unreasonable discrimination on the part of interstate carriers against interstate trade, carefully examined the question of its authority and decided that it had the power to make this remedial order. The Commerce Court sustained the authority of the Commission and it is clear that we should not reverse the decree unless the law has been misapplied. This we cannot say; on the contrary, we are convinced that the authority of the Commission was adequate.

The further objection is made that the prohibition of section three is directed against unjust discrimination or undue preference only when it arises from the voluntary act of the carrier and does not relate to acts which are the result of conditions wholly beyond its control. *East Tennessee &c. Ry. Co. v. Interstate Commerce Commission*, 181 U. S. 1, 18. The reference is not to any inherent lack of control arising out of traffic conditions, but to the requirements of the local authorities which are assumed to be binding upon the carriers. The contention is thus merely a repetition in another form of the argument that the Commission exceeded its power; for it would not be contended that local rules could nullify the lawful exercise of Federal authority. In the view that the Commission was entitled to make the order, there is no longer compulsion upon the carriers by virtue of any inconsistent local requirement. We are not unmindful of the gravity of the

question that is presented when state and Federal views conflict. But it was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control.

In conclusion: Reading the order in the light of the report of the Commission, it does not appear that the Commission attempted to require the carriers to reduce their interstate rates out of Shreveport below what was found to be a reasonable charge for that service. So far as these interstate rates conformed to what was found to be reasonable by the Commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates, to which the order relates, as to remove the forbidden discrimination. But this result they are required to accomplish.

The decree of the Commerce Court is affirmed in each case.

Affirmed.

MR. JUSTICE LURTON and MR. JUSTICE PITNEY dissent.
